

No. 14726

United States
Court of Appeals
for the Ninth Circuit

CORNELIUS P. COUGHLAN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Appeal from the District Court
for the District of Alaska,
Fourth Division

FILED

JAN - 3 1956

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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ATTORNEYS OF RECORD

THEODORE F. STEVENS,
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Fairbanks, Alaska;

GEORGE M. YEAGER,
Asst. U. S. Attorney,
Box 111,
Fairbanks, Alaska;

PHILIP W. MORGAN,
Asst. U. S. Attorney,
Box 111,
Fairbanks, Alaska;

Attorneys for Petitioner and Appellee.

CORNELIUS P. COUGHLAN,
c/o Steel Hotel,
Fairbanks, Alaska,

Attorney pro se for Respondent and Appellant.

In the District Court for the District of Alaska,
Fourth Judicial Division

No. 7521

In the Matter of

The Disbarment of CORNELIUS P. COUGHLAN,
Attorney at Law.

INFORMATION

Comes now T. N. Gore, Jr., Assistant United States Attorney for the District of Alaska, Fourth Judicial Division, and proceeding under the provisions of sub-section 1, Section 35-2-71, Alaska Compiled Laws Annotated, 1949, and at the written request of the Tanana Valley Bar Association, through its members, respectfully informs the Court as follows:

I.

That the above-named Cornelius P. Coughlan is an attorney at law admitted to practice in the Territory of Alaska, and at all times hereinafter mentioned he has resided in, and practiced law in, the Town of Fairbanks, Alaska.

II.

That on the 12th day of December, 1952, the said Cornelius P. Coughlan was found guilty and convicted of four (4) counts of the crime of embezzlement, a felony under the laws of the Territory of Alaska, by a regular trial jury, sitting in the District Court for the District of Alaska, Fourth Divi-

sion, in the case of "United States of America vs. C. P. Coughlan" cause No. 1651 Criminal, the records and files of said cause No. 1651 Criminal being incorporated herein by reference and made a part hereof, as though set out in full, and on the 9th day of May, 1953, defendant was sentenced.

Wherefore, because the said Cornelius P. Coughlan has violated his oath, duties and obligations as an attorney at law, and is guilty of unlawful misconduct in the practice of his profession and having been convicted of a felony, all of which shows his unfitness to manage the business of others in his capacity as an attorney, or to serve as an officer of this Court, as herein above set forth; it is prayed of this Honorable Court that the said Cornelius P. Coughlan be permanently disbarred from the practice of law within the Territory of Alaska, and that such necessary orders issue to effect the premises.

Dated at Fairbanks, Alaska, this 19th day of May, 1953.

/s/ T. N. GORE, JR.,

Asst. United States Attorney.

Duly verified.

[Endorsed]: Filed May 19, 1953.

[Title of District Court and Cause.]

ORDER

Whereas, in the above-entitled action there has been filed a verified Information praying for the disbarment of the above-named Cornelius P. Coughlan, as an attorney at law,

Now, Therefore, you, the above-named Cornelius P. Coughlan, are hereby required to appear and answer the above-mentioned Information in the above-styled Court within 7 days after service upon you of a copy of said Information and a copy of this Order.

Your appearance and answer, as above-mentioned, may be in writing, duly verified as required of pleadings in civil actions, and other pleadings, if any, shall conform to the Federal Rules of Civil Procedure.

In the event that you fail to so appear and answer, judgment for removal as an attorney at law will be entered against you, pursuant to the provisions of Sections 35-2-71 to 35-2-77, inclusive, Alaska Compiled Laws Annotated, 1949.

Done at Fairbanks, Alaska, this 19th day of May, 1953.

/s/ HARRY E. PRATT,
District Judge.

[Endorsed]: Filed and entered May 19, 1953.

[Title of District Court and Cause.]

AMENDED INFORMATION

Comes now T. N. Gore, Jr., Assistant United States Attorney for the District of Alaska, Fourth Judicial Division, and proceeding under the provisions of subsection 1, Section 35-2-71, Alaska Compiled Laws Annotated, 1949, and at the written request of the Tanana Valley Bar Association, through its members, respectfully informs the Court as follows:

I.

That the above-named Cornelius P. Coughlan is an attorney at law admitted to practice in the Territory of Alaska, and at all times hereinafter mentioned he has resided in, and practiced law in, the Town of Fairbanks, Alaska.

II.

That on the 12th day of December, 1952, the said Cornelius P. Coughlan was found guilty and convicted of four (4) counts of the crime of embezzlement, a felony under the laws of the Territory of Alaska, by a regular trial jury, sitting in the District Court for the District of Alaska, Fourth Division, in the case of "United States of America vs. C. P. Coughlan," cause No. 1651 Criminal, and that on the 9th day of May, 1953, defendant was sentenced to serve two (2) years on each of the four counts of embezzlement, to run consecutively, in a Federal Penitentiary, a copy of the Judgment and Commitment entered in said cause No. 1651

Criminal being attached hereto, marked Exhibit "A" and by this reference made a part hereof as though set forth in full herein.

Wherefore, because the said Cornelius P. Coughlan has violated his oath, duties and obligations as an attorney at law, and is guilty of unlawful misconduct in the practice of his profession and having been convicted of a felony, all of which shows his unfitness to manage the business of others in his capacity as an attorney, or to serve as an officer of this Court, as herein above set forth; it is prayed of this Honorable Court that the said Cornelius P. Coughlan be permanently disbarred from the practice of law within the Territory of Alaska, and that such necessary orders issue to effect the premises.

Dated at Fairbanks, Alaska, this 25th day of June, 1953.

/s/ T. N. GORE, JR.,

Asst. United States Attorney.

Receipt of copy hereby acknowledged.

Duly verified.

EXHIBIT A

In the District Court for the Territory of Alaska,
Fourth Judicial Division

No. 1651 Cr.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

C. P. COUGHLAN,

Defendant.

JUDGMENT AND COMMITMENT

On the 9th day of May, 1953, came the attorney for the Government, and the defendant appeared in person, and as counsel for and on behalf of himself.

It Is Adjudged that the defendant has been convicted upon a verdict of guilty of the offenses charged in the four counts of the Indictment on file herein, to wit:

In Count I of the crime of Embezzlement by Employee, committed in the Fourth Judicial Division, Territory of Alaska, on the 17th day of December, 1951, by the defendant feloniously embezzling and converting to his own use the sum of One Thousand (\$1,000.00) Dollars, by making a check payable to himself and endorsing and cashing same against funds of the estate of Raymond Silver, deceased; said defendant being then and there employed as attorney at law by Frederick Donhauser, Administrator of the said Estate of Raymond Silver, de-

ceased, and entrusted with a Power of Attorney in fact as an incident to such employment to withdraw and disburse estate funds, and

In Count II of the crime of Embezzlement by Employee, committed in the Fourth Judicial Division, Territory of Alaska, on the 15th day of January, 1952, by the defendant feloniously embezzling and converting to his own use the sum of One Thousand (\$1,000.00) Dollars, by making a check payable to himself and endorsing and cashing same against funds of the estate of Raymond Silver, deceased; said defendant being then and there employed as attorney at law by Frederick Donhauser, Administrator of the said Estate of Raymond Silver, deceased, and entrusted with a Power of Attorney in fact as an incident to such employment to withdraw and disburse estate funds, and

In Count III of the crime of Embezzlement by Employee, committed in the Fourth Judicial Division, Territory of Alaska, on the 5th day of April, 1952, by the defendant feloniously embezzling and converting to his own use the sum of One Thousand (\$1,000.00) Dollars, by making a check payable to himself and endorsing and cashing same against funds of the estate of Raymond Silver, deceased; said defendant being then and there employed as attorney at law by Frederick Donhauser, Administrator of the said Estate of Raymond Silver, deceased, and entrusted with a Power of Attorney in fact as an incident to such employment to withdraw and disburse estate funds, and

In Count IV of the crime of Embezzlement by Employee, committed in the Fourth Judicial Division, Territory of Alaska, on the 3d day of October, 1951, by the defendant, being then and there employed as attorney at law by Frederick Donhauser, Administrator of the Estate of Raymond Silver, deceased, and as such employee having received for his care and custody a check in the amount of Nine Hundred Fifty (\$950.00) Dollars, representing the proceeds of a sale of property belonging to the said estate, feloniously presenting and cashing said check and converting the monies thereof to his own use;

And the Court, having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause being shown to the contrary, or appearing to the Court, and the Court being fully advised in the premises,

It Is Ordered and Adjudged:

(1) That the defendant is guilty as charged in Count I of said Indictment of the crime of Embezzlement by Employee, and that he be confined in the United States Penitentiary at McNeil Island, Washington, for a period of two (2) years, such sentence to commence on the 9th day of May, 1953;

(2) That the defendant is guilty as charged in Count II of said Indictment of the crime of Embezzlement by Employee, and that he shall be confined in the United States Penitentiary at McNeil Island, Washington, for a period of two (2) years, such sentence to commence on the termination of

the sentence of two (2) years imposed in Count I hereinabove mentioned;

(3) That the defendant is guilty as charged in Count III of said Indictment of the crime of Embezzlement by Employee, and that he shall be confined in the United States Penitentiary at McNeil Island, Washington, for a period of two (2) years, such sentence to commence on the termination of the sentences of two (2) years each imposed in Counts I and II hereinabove mentioned;

(4) That the defendant is guilty as charged in Count IV of said Indictment of the crime of Embezzlement by Employee, and that he shall be confined in the United States Penitentiary at McNeil Island, Washington, for a period of two (2) years, such sentence to commence on the termination of the sentences of two (2) years each imposed in Counts, I, II and III hereinabove mentioned.

It Is Further Ordered that the Clerk deliver a certified copy of this Judgment and Commitment to the United States Marshal, or other qualified officer, and that the same shall serve as the commitment herein, and that the said defendant pay the costs of this action in the sum of \$1,058.44 to be taxed by the Clerk of the Court.

Done at Fairbanks, Alaska, this 9th day of May, 1953.

/s/ HARRY E. PRATT,
District Judge.

[Endorsed]: Filed June 25, 1953.

[Title of District Court and Cause.]

MOTION TO QUASH AND DISMISS

Comes now the respondent in the above-entitled cause and respectfully moves the Court as follows, to wit:

To quash the service of process and to dismiss the above-entitled action for the reason that: the same does not conform with the laws of the Territory of Alaska in such cases made and provided.

/s/ C. P. COUGHLAN.

Receipt of copy acknowledged.

[Endorsed]: Filed May 26, 1953.

[Title of District Court and Cause.]

ORDER SETTING

The Government was represented by T. N. Gore, Assistant U. S. Attorney; the respondent was present and represented himself.

Mr. Gore moved for the setting of this cause for trial; Mr. Coughlan resisted the Motion to set the trial of this cause.

It was Ordered that the trial of this cause be set for 1:00 p.m., Friday, June 19, 1953.

Court was adjourned until 1:00 p.m., Friday, June 19, 1953.

* * *

Entered June 18, 1953.

[Title of District Court and Cause.]

ORDER

The Government was represented by T. N. Gore, Assistant U. S. Attorney; the respondent was present in person and represented himself.

Respective counsel presented argument on the respondent's Motion to Quash and to dismiss the Petition.

It was Ordered that the motion to Quash be granted.

Court adjourned to 10:00 a.m., Wednesday, June 24, 1953.

* * *

Entered June 23, 1953.

[Title of District Court and Cause.]

MOTION

Comes now the Respondent above named, pro se, and respectfully moves the Court as follows, to wit:

For extension of time in which to plead.

Dated this 2nd day of July, 1953, at Fairbanks, Alaska.

/s/ C. P. COUGHLAN,
Pro Se.

Address of Respondent:

Federal Jail, Fairbanks, Alaska.

Receipt of copy acknowledged.

[Endorsed]: Filed July 6, 1953.

United States Court of Appeals
for the Ninth Circuit

No. 14,064

C. P. COUGHLAN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Sept. 21, 1954

Appeal from the District Court for the District
of Alaska, Fourth Division

Before: Denman, Chief Judge, and Bone and Orr,
Circuit Judges.

Denman, Chief Judge:

Coughlan appeals from a judgment convicting him of several embezzlements in violation of Section 65-5-61 of the Alaska compiled laws, making felonies of such embezzlement. The pertinent sections of the indictment are:

“Count I.

“The Grand Jury charges in Count I of this Indictment:

“On the 17th day of December, 1951, in the Fourth Judicial Division and Territory of Alaska, C. P. Coughlan, being then and there employed as attorney at law by Frederic Donhauser, Administrator of the Estate of Raymond Silver, deceased, and entrusted with a Power

of Attorney in fact as an incident to such employment, to withdraw and disburse estate funds, feloniously embezzled and converted to his own use the sum of One Thousand (1,000.00) Dollars, by the said C. P. Coughlan making a check payable to himself and endorsing and cashing same against said estate funds, in violation of Section 65-5-61 of the Alaska Compiled Laws Annotated, 1949.”

Counts II and III charge the same offense at different dates.

“Count IV.

“The Grand Jury charges in Count IV of this Indictment:

“On the 3rd day of October, 1951, in the Fourth Judicial Division and Territory of Alaska, C. P. Coughlan, being then and there employed as attorney at law by Frederic Donhauser, Administrator of the Estate of Raymond Silver, deceased, and as such employee having received for his care and custody a check in the amount of Nine Hundred Fifty (950.00) Dollars, representing the proceeds of a sale of property belonging to the said estate, feloniously presented and cashed said check and converted the monies thereof to his own use, in violation of Section 65-5-61 of the Alaska Compiled Laws Annotated, 1949.”

The Government contends that the evidence shows that the administration of Mr. Donhauser

was of an estate in probate and that appellant had in fact been employed by Mr. Donhauser as attorney for the estate. Section 65-5-61 provides that such a felonious embezzlement must be by "any officer, agent, clerk or employee or servant of any private person or persons, copartnership or incorporation."

Coughlan contends (a) that an estate in probate is not a "private person" within the strict construction of the words "private person or a copartnership": (b) that the indictment describes him as employed as an attorney at law acting under "a power of attorney in fact as an incident to such employment to withdraw and disburse estate funds" whereas it is admitted that no funds were withdrawn under such power of attorney which was given him; (c) that the court, in effect, amended the indictment by instructing the jury to ignore its charges that he acted under a power of attorney; (d) that the Alaska law specifically provides in § 65-5-66 for a misdemeanor punishment an embezzlement of an "attorney"; subsection 66 being one of the several laws of the compiled laws under the heading of "embezzlement," Alaska Compiled Laws page 2232 and that the several embezzlement provisions should be construed together strictly in favor of the accused. So considering them together the contention is that the specific provision for prosecuting Coughlan as an "attorney" under 66-5-66 confines his prosecution to the latter misdemeanor section and does not warrant a prosecu-

tion as "agent" under 66-5-61, the felony provision.

A. The four counts of the indictment being specifically confined to the provisions of § 66-5-61, require proof that the embezzlements must be by "any officer, agent, clerk or employee or servant of any private person or persons, copartnership or incorporation." The contention that the estate or its court appointed administrator was not a *private* person was raised by Coughlan's objection to the following instruction 1 (a), as follows:

1(a) "The jury is instructed that the laws of Alaska provide in substance:

" 'That if any * * * employee * * * of any private person * * * shall embezzle or fraudulently convert to his own use * * * any money which shall have come * * * or be under his care by virtue of such employment, such * * * employee * * * shall be deemed guilty of embezzlement * * *.' "

"Mr. Taylor: 'Now we are going to object to the giving of Instruction No. 1(a) upon the grounds that there was no testimony showing that the defendant was an employee of any private person * * *.' " (Tr. pp. 601-602.)

It is elementary that these words "private person" of a criminal statute must be strictly construed. *United States vs. Wiltberger*, 5, Wheaton 76, 93. The word "officer" in 66-5-61 obviously here means the officer of a "corporation" later used in the sentence, not an officer appointed by a court

such as an administrator of an estate in probate. On embezzling from such an estate one is not taking funds from a private person. The prosecution did not maintain its burden of proof in this essential respect.

B. The indictment so construed must be deemed to charge the embezzlement as limited to one committed by Coughlan acting under a power of attorney from the administrator. It being admitted that he did not so act, the prosecution again failed to maintain its burden of proof.

C. The court erred in widening the scope of the indictment to all embezzlements, by instructing the jury to consider the indictment without limiting them to an offense done under the power of attorney.

D. The several statutes under Article 5 of the Criminal Code headed "Embezzlement" should be construed together. The heading of the code article reads:

Embezzlement

§65-5-61 Embezzlement by employee or servant.

§65-5-62. Embezzlement by bailee: Indictment.

§65-5-63. Embezzlement of public money.

§65-5-64. Verdict: Defense to prosecution.

§65-5-65: Embezzlement by trustee.

§65-5-66. Embezzlement by banker, broker, etc.

The sixth and last of the sections of Article 5 is the only one of the provisions in which the word "attorney" is used. The crime created is a misdemeanor, not a felony. The pertinent portions are:

"§65-5-66. Embezzlement by banker, broker, etc. That if any person, being a banker, broker, merchant, attorney, or agent, and *being intrusted with the property* of another, shall by any means, with intent to defraud, convert the same, or any portion thereof, to his own use or benefit * * * "

The words "attorney or agent" must be construed as referring to an attorney at law, a mere attorney in fact being covered by the word "agent." Construing the six provisions together under such a title we think the offense charged against Coughlan comes under the misdemeanor provisions of §66-5-66 and not under the "agent" provision of §66-5-61, creating a felony.

The judgment is reversed and the indictment ordered dismissed.

(Endorsed): Opinion. Filed Sept. 21, 1954.

PAUL P. O'BRIEN,
Clerk.

[Endorsed]: Filed September 27, 1954, D. C. Terr. of Alaska.

In the District Court for the District of Alaska,
Fourth Judicial Division

No. 7521 Civil

In the matter of

The Disbarment of CORNELIUS P. COUGHLAN,
Attorney at Law.

AMENDED INFORMATION

Comes now Theodore F. Stevens, United States Attorney for the above District and Division and, pursuant to the authority of Section 35-2-72, Alaska Compiled Laws Annotated, 1949, informs this court as follows:

Count I.

That Cornelius P. Coughlan (C. P. Coughlan), an attorney admitted to practice before this Court, has committed a dishonest act, to wit: The said Cornelius P. Coughlan, on or about the 3rd day of October, 1951, being the attorney for Frederick P. Donhauser, Administrator for the Estate of Raymond Silver, deceased, in the Fourth Division, District of Alaska, and having received from the Lomen Commercial Company, Nome, Alaska, Nine Hundred and Fifty Dollars (\$950.00) in the form of a check, representing the proceeds from the sale of one three-quarter ton G.M.C. pick-up truck, which truck was an asset of said estate, did then and there cash said check and convert the proceeds thereof to his own use, contrary to the provisions of Section 35-2-71 (6) of the Alaska Compiled Laws Annotated,

1949, and that for said misconduct the said Cornelius P. Coughlan should be disbarred.

Count II.

That Cornelius P. Coughlan (C. P. Coughlan), an attorney admitted to practice before this court, has committed a dishonest act, to wit: The said Cornelius P. Coughlin, on or about the 17th day of December, 1951, being the attorney for Frederick P. Donhauser, Administrator for the Estate of Raymond Silver, deceased, in the Fourth Division, District of Alaska, and having been entrusted with the authority to dispense funds of said estate, then and there endorsed a check in the amount of One Thousand Dollars (\$1,000.00), made payable to C. P. Coughlan, cashed the same against said estate funds, and converted the proceeds of said check to his own use, contrary to the provisions of Section 35-2-71 (6) of the Alaska Compiled Laws annotated, 1949, and that for said misconduct the said Cornelius P. Coughlan should be disbarred.

Count III.

That Cornelius P. Coughlan (C. P. Coughlan), an attorney admitted to practice before this Court, has committed a dishonest act, to wit: the said Cornelius P. Coughlan, on or about the 15th day of January, 1952, being the attorney for Frederick P. Donhauser, Administrator for the Estate of Raymond Silver, deceased, in the Fourth Division, District of Alaska, and having been entrusted with the authority to dispense funds of said estate, then and there endorsed a check in the amount of One

Thousand Dollars (\$1,000.00), made payable to C. P. Coughlan, cashed the same against said estate funds, and converted the proceeds of said check to his own use, contrary to the provisions of Section 35-2-71 (6) of the Alaska Compiled Laws Annotated, 1949, and that for said misconduct the said Cornelius P. Coughlan should be disbarred.

Count IV.

That Cornelius P. Coughlan (C. P. Coughlan), an attorney admitted to practice before this Court, has committed a dishonest act, to wit; the said Cornelius P. Coughlan, on or about the 5th day of April, 1952, being the attorney for Frederick P. Donhauser, Administrator for the Estate of Raymond Silver, deceased, in the Fourth Division, District of Alaska, and having been entrusted with the authority to dispense funds of said estate, then and there endorsed a check in the amount of One Thousand Dollars (\$1,000.00), made payable to C. P. Coughlan, cashed the same against said estate funds, and converted the proceeds of said check to his own use, contrary to the provisions of Section 35-2-71 (6) of the Alaska Compiled Laws Annotated, 1949, and that for said misconduct the said Cornelius P. Coughlan should be disbarred.

Dated at Fairbanks, Alaska, this 17th day of December, 1954.

/s/ THEODORE F. STEVENS,
United States Attorney.

[Endorsed]: Filed December 17, 1954.

[Title of District Court and Cause.]

Amended Order

Whereas, in the above-entitled action there has been filed an Amended Information praying for the disbarment of the above-named Cornelius P. Coughlan, as an attorney at law,

Now, Therefore, you, the above-named Cornelius P. Coughlan, are hereby required to appear and answer the above-mentioned Amended Information in the above-styled Court within Ten (10) days after service upon you of a copy of said Amended Information and a copy of this Order.

Your appearance and answer, as above mentioned, may be in writing, duly verified as required by Section 35-2-75 of the Alaska Compiled Laws Annotated, 1949.

You may appear to answer only, and your attention is directed to Section 35-2-75, Alaska Compiled Laws Annotated, 1949. No demurrer in any form other than in an answer will be considered by this Court. In the event you fail to appear and answer in the time above specified, this Court will proceed to determine the allegations of the Amended Information filed against you.

/s/ VERNON D. FORBES,
District Judge.

[Endorsed]: Filed and entered December 17, 1954.

[Title of District Court and Cause.]

SUBPOENA DUCES TECUM

To: Theodore Stevens.

You Are Hereby Commanded to appear at Room 223 of the Lavery Building, 203 Cushman Street, Fairbanks, Alaska, at 1:00 p.m. on the 23rd day of December, 1954, to testify on behalf the Repondent C. P. Coughlan at Deposition hearing before W. W. Taylor, a notary public, and bring with you all of the files, records, correspondence, exhibits or other matters that you may have in your possession or control appertaining in any wise to Cornelius P. Coughlan, C. P. Coughlan or Jack Coughlan.

Dec. 22, 1954.

[Seal] /s/ JOHN B. HALL,
Clerk.

Return on service of writ attached.

[Endorsed]: Filed December 22, 1954.

[Title of District Court and Cause.]

NOTICE

To: Theodore Stevens, United States Attorney,
attorney for relator, Fairbanks, Alaska.

Please take notice that at 1:00 p.m. on the 23rd day of December, 1954, at Room 223 of the Lavery Building, 203 Cushman Street, Town of Fairbanks,

Fourth Judicial Division, Territory of Alaska, the respondent C. P. Coughlan, will take the deposition of Theodore Stevens, whose address is unknown, excepting that he is the United States Attorney at Fairbanks, Alaska, and occupies offices in the United States Court House and Post Office Building at Fairbanks, Alaska, upon oral examination before W. W. Taylor, a notary public. The oral examination will continue from day to day until completed.

/s/ C. P. COUGHLAN,
Respondent.

Return on service of writ attached.

[Endorsed]: Filed December 22, 1954.

[Title of District Court and Cause.]

MOTION TO QUASH SUBPOENA
DUCES TECUM

Comes now, Theodore F. Stevens, United States Attorney for the Fourth Judicial Division, Territory of Alaska, and moves this Honorable Court to quash the subpoena duces tecum, issued under the name of the Clerk of this Court, on the ground that there is no foundation of law for the said subpoena to be issued for the United States Attorney to produce the files, records, correspondence, exhibits or other matters in his possession, pertaining to Cornelius P. Coughlan, C. P. Coughlan or Jack Coughlan. The United States Attorney has these records

in his possession pursuant to his authority under Section 35-2-72, Alaska Compiled Laws Annotated, 1949, and such evidence will be presented to this court pursuant to the provisions of the Alaska Code on the subject.

Also, said files, records, correspondence, exhibits and other matters in possession of the United States Attorney pertain to possible criminal actions against the said C. P. Coughlan and said evidence was obtained by the United States Attorney and his predecessors in office in accordance with law and are as records of the Department of Justice, privileged and confidential.

Dated at Fairbanks, Alaska, this 22nd day of December, 1954.

/s/ THEODORE F. STEVENS,
United States Attorney.

Receipt of copy acknowledged.

[Endorsed]: Filed December 22, 1954.

[Title of District Court and Cause.]

NOTICE OF HEARING

To the Above-Named Cornelius P. Coughlan, Respondent

You Are Hereby Notified that on the 22nd day of December, 1954, at the hour of 2:30 o'clock, p.m., or as soon thereafter as counsel may be heard, the

issues in the above-entitled cause, raised by the United States Attorney's motion to quash subpoena duces tecum, will be brought on for hearing.

Dated at Fairbanks, Alaska, this 22nd day of December, 1954.

/s/ THEODORE F. STEVENS,
United States Attorney.

[Endorsed]: Filed December 22, 1954.

[Title of District Court and Cause.]

MOTION TO QUASH NOTICE
OF DEPOSITION

Comes now the United States Attorney, Theodore F. Stevens, and moves this Honorable Court to quash the notice of deposition filed upon the United States Attorney on this 22nd day of December, 1954, for the reason that the Federal Rules of Civil Procedure are not applicable in this proceeding.

Dated at Fairbanks, Alaska, this 22nd day of December, 1954.

/s/ THEODORE F. STEVENS,
United States Attorney.

Receipt of copy acknowledged.

[Endorsed]: Filed December 22, 1954.

[Title of District Court and Cause.]

ORDER

The Petitioner was represented by Theodore F. Stevens, United States Attorney; the Respondent, C. P. Coughlan, represented himself.

Respective counsel had argument on the Petitioner's Motion to Quash the Subpoena Duces Tecum served on the Petitioner by the Respondent.

It was ordered that the Motion to Quash the Subpoena Duces Tecum be granted.

Mr. Coughlan presented argument resisting the Petitioner's Motion to Quash the Notice of the Taking of the Deposition of the Petitioner.

It was Ordered that the above Motion be granted.

Mr. Coughlan moved for an Extension of Time for him to answer the information in this cause and presented argument in support thereof.

Mr. Stevens resisted the Motion.

It was ordered that defendant have the statutory time, ten days, in which to procure counsel, file his Answer, and prepare his defense, or should he need more time, file verified affidavits with a motion for an Extension of Time by the 31st of December, 1954.

Entered December 22, 1954

[Title of District Court and Cause.]

MOTION

Comes Now the Respondent, above-named, pro se, and respectfully moves this honorable Court as follows, to wit:

That the Court issue an Order requiring the United States Attorney to produce and permit Respondent to inspect and to photograph all of the signatures of Frederick Donhauser, Frederick A. Donhauser and Frederick Donhauser, Adm. of the Estate of Raymond Silver, Deceased, that may be in his custody, control or possession.

The United States Attorney has the possession, custody or control of said signatures. They constitute or contain evidence relevant and material to a matter involved in this action.

Said signatures may or may not appear on confidential or otherwise privileged documents, hence the United States Attorney should be allowed to produce said signatures in a manner allowing for the protection of any confidential or otherwise privileged matters.

This Motion is based upon Rule 34 of the Federal Rules of Civil Procedure and other matters of record.

Dated at Fairbanks, Alaska, this 29th day of December, 1954.

/s/ C. P. COUGHLAN,
Respondent, Pro Se.

Affidavit

United States of America,
Territory of Alaska—ss.

I, C. P. Coughlan, being first duly sworn, on oath, depose and say as follows, to wit:

That I am the Resepondent in the aforesaid cause, That I have journeyed to the City of Anchorage, Third Judicial Division, Territory of Alaska, for the purpose of obtaining the services of an expert witness to examine the signatures of Frederick Donhauser, which are in the possession, control or custody of the United States Attorney, Fairbanks, Alaska. That I have brought the said expert witness to the Town of Fairbanks, Fourth Judicial Division, Territory of Alaska, for the purpose of an immediate examination of the aforesaid signatures, which are essential for the preparation of my Answer in the aforesaid cause.

That your affiant will be placed at a financial loss, if he is not allowed to have the aforesaid signatures examined and photographed on the 30th day of December, 1954. That it is an undue hardship on Respondent to keep the aforesaid expert witness in Fairbanks while awaiting an Order from this Court allowing said expert to examine and copy said signatures.

Further Affiant Sayeth not.

Dated at Fairbanks, Alaska, this 29th day of December, 1954.

/s/ C. P. COUGHLAN.

Subscribed and Sworn to Before me this 29th day of December, 1954.

[Seal] /s/ JOHN B. HALL,
Clerk.

Affidavit of service of copy attached.

[Endorsed]: Filed December 29, 1954.

[Title of District Court and Cause.]

MOTION

Comes Now the Respondent, above named, pro se, and respectfully moves this Honorable Court as follows, to wit:

That Respondent be granted additional time in which to answer or otherwise plead the information on file herein against him, and for reason therefor states that he has been unable to obtain the services of an attorney to represent him in this matter and, further, has been unable to procure expert advise essential to a proper preparation of his Answer. Respondent has made a diligent effort to obtain an attorney to represent him and has made a diligent effort to obtain the services of an expert for the purpose of properly preparing his Answer.

This Motion is based upon the Affidavit hereunto appended and other matters apparent of record.

Dated at Fairbanks, Alaska, this 30th day of December, 1954.

/s/ C. P. COUGHLAN,
Respondent, Pro Se.

Affidavit

United States of America,
Territory of Alaska—ss.

I, C. P. Coughlan, being first duly sworn, on oath, depose and say as follows, to wit:

That your affiant is the Respondent in the above-entitled cause.

That your affiant does not wish to defend himself in this matter without the services of an attorney at law.

That your affiant has made a diligent effort to obtain the services of an attorney at law to represent him in the defense of this matter but has been unable to do so.

That your affiant has traveled to the City of Anchorage, Third Judicial Division, Territory of Alaska, in an effort to obtain the services of an attorney to represent him in this matter, but was unable to find one.

That your affiant finds it imperative that he obtain the services of an expert in order to properly prepare a defense to the charges contained in the information herein.

That your affiant traveled to the City of Anchorage, Third Judicial Division, Territory of Alaska, and procured the services of an expert and brought him to the Town of Fairbanks, Fourth Judicial Division, Territory of Alaska, for the purpose of examining certain evidence.

That your affiant was unable to contact the United States Attorney early enough on the 29th day of December, 1954, in order to have the said expert examine the evidence desired, and the said expert was unexpectedly called back to Anchorage.

That your affiant believes that he requires an extension of time up to and including the 31st day of January, 1955, to enable him to properly respond in this matter.

That Affiant has been diligent in his efforts to make a more rapid response herein, but has been prevented from doing so through no fault of his own.

That it is exceptionally difficult to obtain the services of an attorney to represent the interests of your affiant, as this Court was informed in open court on the 22nd day of December, 1954, by the United States Attorney.

That it is almost impossible to find properly qualified witnesses with the proper degree of expertness to advise affiant in the use of technical material to be used in his response; and that affiant knows of only one such person residing in the Territory of Alaska.

Further Affiant sayeth not.

Dated this 30th day of December, 1954.

/s/ C. P. COUGHLAN.

Subscribed and Sworn to before me on this 30th day of December, 1954.

[Seal] /s/ JOHN B. HALL,
Clerk of Court.

Receipt of copy acknowledged.

[Endorsed]: Filed December 30, 1954.

[Title of District Court and Cause.]

ORDER AND ORDER SETTING

The Government was represented by Theodore F. Stevens, United States Attorney; the respondent was present and represented himself.

Counsel presented argument on the respondent's motion for additional time in which to answer the Amended Information herein.

It was Ordered that the Motion be granted, the Respondent to have until January 31, 1955, in which to prepare, serve, and file his Answer and the Hearing was set for 10:00 a.m., Monday, February 7, 1955.

* * *

Entered December 30, 1954.

[Title of District Court and Cause.]

MOTION FOR RELEASE OF DOCUMENTS

Comes now the United States Attorney in the above matter and moves the Honorable Court to

order the United States Commissioner for the Fairbanks Precinct, Fourth Judicial Division, District of Alaska, to release the following documents from the official file of Probate No. 1416, being the Estate of Raymond Silver, Deceased:

1. Petition for appointment of Administrator of Deceased's Estate, notarized April 20, 1951, bearing the signatures of "Frederic Donhauser," Petitioner; C. P. Coughlan, Attorney for Petitioner, and Cornelius P. Coughlan, Notary Public.

2. Oath of Administrator of Estate, notarized on May 3, 1951, bearing the signatures of Frederic Donhauser, Administrator, and Cornelius P. Coughlan, Notary Public.

3. Petition for Leave to Sell Personal Property, dated October 30, 1951, bearing the signature of C. P. Coughlan, Attorney in Fact.

4. First and Final Account and Report of Administrator and Petition for Order Settling Account, for Distribution, Decreeing Heirs, and Closing the Estate, filed January 12, 1952, bearing the signatures of Frederic Donhauser, Administrator, and C. P. Coughlan, Attorney for Administrator.

These documents are needed to send to Washington, D. C., for use in connection with a deposition to be taken on written interrogatories to be used in this matter. All of said items will be used by the Government in connection with this disbarment proceeding.

Dated at Fairbanks, Alaska, this 28th day of January, 1955.

/s/ THEODORE F. STEVENS,
United States Attorney.

[Endorsed]: Filed January 28, 1955.

[Title of District Court and Cause.]

ORDER FOR RELEASE OF DOCUMENTS

Upon Motion of the United States Attorney herein, it is hereby ordered that the Honorable LaDessa Nordale, United States Commissioner and Probate Judge for the Fairbanks Precinct, Fourth Judicial Division, District of Alaska, may and shall release to the United States Attorney for use in a deposition to be taken in Washington, D. C., in connection with this proceeding, the following documents from Probate File No. 1416, being the Estate of Raymond Silver, Deceased:

1. Petition for appointment of Administrator of Deceased's Estate, notarized April 20, 1951, bearing the signatures of "Frederic Donhauser," Petitioner, and Cornelius P. Coughlan, Attorney for Petitioner, and Cornelius P. Coughlan, Notary Public.

2. Oath of Administrator of Estate, notarized on May 3, 1951, bearing the signatures of Frederic Donhauser, Administrator, and Cornelius P. Coughlan, Notary Public.

3. Petition for Leave to Sell Personal Property, dated October 30, 1951, bearing the signature of C. P. Coughlan, Attorney in Fact.

4. First and Final Account and Report of Administrator and Petition for Order Settling Account, for Distribution, Decreeing Heirs, and Closing the Estate, filed January 12, 1952, bearing the signatures of Frederic Donhauser, Administrator, and C. P. Coughlan, Attorney for Administrator.

It is further ordered that the United States Attorney shall return said documents to said United States Commissioner upon completion of these proceedings.

Dated at Fairbanks, Alaska, this 28th day of January, 1955.

/s/ VERNON D. FORBES,
District Judge.

[Endorsed]: Filed and entered January 28, 1955.

[Title of District Court and Cause.]

MOTION

Comes Now the Respondent, above named, and respectfully Moves this honorable Court as follows, to wit:

I.

To dismiss or strike the Information filed herein for the reason that the same is barred by reason of a judgment having been obtained in a previous

cause before this Court between the same parties respecting the same subject matter.

II.

To strike or dismiss the Amended Information herein for the reason that it states a new cause of action entirely separate and distinct from the original Information on file herein, contrary to rule and law in such cases made and provided.

III.

To dismiss or strike the entire cause for the reason that the Court has no jurisdiction herein as the result of the cause being statutory, with the subject statute authorizing the same having been repealed.

IV.

To dismiss or strike the Amended Information for the reason that the right to maintain such a cause has been estopped by laches.

Done this 30th day of January, 1955, at Anchorage, Alaska.

/s/ C. P. COUGHLIN.

Affidavit of Service by Mail attached.

[Endorsed]: Filed January 31, 1955.

[Title of District Court and Cause.]

NOTICE OF HEARING

To Cornelius P. Coughlin, Above Named:

You Will Please Take Notice that the motion to dismiss will be called on for hearing in the court

room of the above-entitled Court at Fairbanks, Alaska, on the 3rd day of February, 1955, at the hour of 10:00 o'clock, a.m., on said day, or as soon thereafter as counsel can be heard.

Dated at Fairbanks, Alaska, this 31st day of January, 1955.

/s/ THEODORE F. STEVENS,
United States Attorney.

[Endorsed]: Filed January 31, 1955.

[Title of District Court and Cause.]

ORDER

The Government was represented by Theodore F. Stevens, United States Attorney; the Respondent was present and represented himself.

Respective counsel had argument on the matter as to whether the Motion to Dismiss was properly filed in the conformity with a previous agreement of respective counsel in re the filing of his Answer by Respondent.

Recess to 11:00 a.m.

11:00 A.M.

Came the respective counsel as heretofore. Respective counsel presented argument on the motion to dismiss or to strike the amended Information in

this cause and the Government's motion to strike the Respondent's motion.

It was Ordered that the motion of the Government to strike the motion of the Respondent be granted.

The Respondent stated to the Court that he desired his Motion to Dismiss and to strike to be considered as his Answer.

Mr. Stevens resisted this procedure and presented argument.

The Respondent stated that he would file his Verified Answer today.

Entered February 3, 1955.

[Title of District Court and Cause.]

ANSWER

Comes Now the Respondent, above named, and for Answer to the Information on file herein against him states, alleges, admits, denies and qualifies as follows, to wit:

I.

Denies all of the material allegations contained in the various Counts of the Information to the effect that Respondent has committed the dishonest acts alleged contrary to the provisions of Section 35-2-71 (6) of the Alaska Compiled Laws Annotated, 1949, and alleges that Respondent should not be disbarred.

Wherefore, Respondent prays that the Information be declared by judgment of this Court to be unwanton and confirm that the said Respondent is a member of the bar of this Court in good standing.

First Affirmative Defense

Comes Now the Respondent above named and for a First Affirmative Defense alleges as follows, to wit:

I.

That this action is barred and under abatement by reason of the judgment had and obtained between the same parties concerning the same subject matter in Cause No. 7462 before this Court, the Court having no further jurisdiction.

Wherefore, Respondent prays that this Court render Judgment in his favor decreeing the Information filed herein to be barred and abated.

Second Affirmative Defense

Comes Now the Respondent above named and for a Second Affirmative Defense alleges as follows, to wit:

I.

That the Amended Information herein is barred and abated and should be struck for the reason that the rules of equity prevent the amendment of a bill so that a new cause of action; such an amendment having been allowed the Court has no further jurisdiction in the matter.

Wherefore, Respondent prays that this Court

render Judgment in his favor decreeing the Information filed herein to be barred and abated.

Third Affirmative Defense

Comes Now the Respondent above named and for a Third Affirmative Defense alleges as follows, to wit:

I.

That this matter is brought before this Court upon statutory grounds, the statute authorizing the same having been repealed; hence, the Court has no jurisdiction in the matter.

Wherefore, Respondent prays that this Court enter Judgment in his favor decreeing the Amended Information to be barred and abated.

Fourth Affirmative Defense

Comes Now the Respondent above named and for a Fourth Affirmative Defense alleges as follows, to wit:

I.

That the Relator is estopped from prosecuting this cause by reason of laches.

Wherefore, Respondent prays that this Court enter Judgment dismissing the Amended Information with prejudice.

Dated this 3rd day of February, 1955.

/s/ C. P. COUGHLAN.

Duly verified.

Receipt of copy acknowledged.

[Endorsed]: Filed February 3, 1955.

[Title of District Court and Cause.]

STIPULATION

It Is Hereby Stipulated between Theodore F. Stevens, United States Attorney, and Cornelius P. Coughlan, pro se, that any notary public or other officer authorized by the laws of the District of Columbia to administer oaths may take the deposition of Clarence E. Bohn in Washington, D. C., on the written interrogatories and cross-interrogatories propounded by the parties herein.

Dated at Fairbanks, Alaska, this 5th day of February, 1955.

/s/ THEODORE F. STEVENS,
United States Attorney.

/s/ C. P. COUGHLAN.

[Endorsed]: Filed February 5, 1955.

[Title of District Court and Cause.]

ORDER

The Government was represented by Theodore F. Stevens, United States Attorney; the Respondent was present and represented himself.

The Court having on February 2, 1955, rendered a decision against the Respondent in this cause, in cause No. 8267, entitled C. P. Coughlan vs. Theodore F. Stevens, and, in view of this opinion, feeling that the aforesaid respondent may feel that this Court

might be prejudiced in the matters in this cause, it was Ordered that the record show that the Court disqualified itself for the trial of this cause, the trial date to be continued generally.

Entered February 7, 1955.

[Title of District Court and Cause.]

ORDER SETTING

The Government was represented by Theodore F. Stevens, United States Attorney; the Respondent was present in person and represented himself.

On the Motion of Mr. Stevens, Mr. Coughlan consenting thereto, it was Ordered that the trial of this cause be set for 10:00 a.m., Monday, February 28, 1955.

Entered February 7, 1955.

[Title of District Court and Cause.]

MOTION

Comes Now the Respondent above named and respectfully moves this Court to extend the time set for the hearing herein, and reset this matter for hearing to be held at 10:00 a.m. on the 10th day of March, 1955, and for reason, therefore, states as follows, to wit:

I.

That the respondent has recently discovered evidence indicating that expert testimony may be available within the next ten (10) days which will not only objectively prove that the Respondent was not guilty of any dishonesty as charged in the Information herein, but will objectively prove the person who did in fact perform the said dishonest act, if any has been committed. That the aforesaid proof will be derived from the Inventory found in Probate Court, Fairbanks Precinct, Fourth Division, Territory of Alaska, and contained in the files and records kept in the Matter of the Estate of Raymond Silver, Deceased, which has been altered and tampered with.

And for the Further Reason :

II.

That the Respondent had previously engaged Anchorage counsel to represent him in the hearing of this matter, but that it has been recently discovered that said Anchorage counsel has engaged in a political controversy, and otherwise publicly indicated that he was opposed to and disrespectful of the qualifications of the Honorable District Judge Folta, who will preside at the hearing of this matter. Consequently this Respondent has found it expedient and necessary to seek new counsel to represent him in this matter; and, if given sufficient time to do so, will engage a member of the Juneau firm of Faulkner-Banfield & Boochever to represent him in the trial of this matter.

This Motion is based upon the affidavit hereunto attached, all of the files and records contained in this cause, and upon every other matter appearing to or otherwise within the cognizance of the Court.

Dated at Fairbanks, Alaska, this 23rd day of February, 1955.

/s/ C. P. COUGHLAN,
Respondent.

Affidavit

United States of America,
Territory of Alaska—ss.

I, Cornelius P. Coughlan, being first duly sworn, on oath, depose and say as follows, to wit:

That I am the Respondent in the above-entitled action.

That in the course of preparing for the trial of this matter I engaged one Luke S. May, a nationally-recognized criminologist residing at Seattle, State of Washington, for the purpose of examining the writings that will be placed in evidence at the trial of this cause; and that as a result of the expert testimony of the aforesaid Luke S. May it is expected that the Respondent will be in a position to produce objective proof that he did not commit the dishonest act charged and possibly objectively show who committed the dishonest act, if, indeed, one had been committed. That the testimony of the said Luke S. May shall be based upon recently discovered

evidence that the original Inventory in the Matter of the Estate of Raymond Silver, Deceased, found in the records of the Probate Court at Fairbanks, Alaska, had been tampered with and altered for the purpose making it appear that affiant had committed a dishonest act.

That there has been political friction of a political nature existing in recent days between the Anchorage Bar and the Honorable District Judge Folta, with which the Affiant is unacquainted and does not care to become enmeshed, which makes it necessary for Affiant to terminate arrangements with Anchorage counsel to assist him in the preparation of his defense in this matter and secure instead Juneau counsel who will not possibly seek to personally affront the Court for political motives at the Court's and Affiant's personal expense.

Further Affiant Sayeth Not.

Dated at Fairbanks, Alaska, this 23rd day of February, 1955.

/s/ CORNELIUS P. COUGHLAN.

Subscribed and Sworn to Before me this 23rd day of February, 1955.

[Seal] /s/ JOHN B. HALL,
Clerk of Court.

Receipt of copy acknowledged.

[Endorsed]: Filed February 23, 1955.

[Title of District Court and Cause.]

STIPULATION

It Is Hereby Stipulated and Agreed by and between Theodore F. Stevens, United States Attorney, and Cornelius P. Coughlan that the time for the hearing in the above-entitled matter be extended to the 17th day of March, 1955, at 10:00 a.m.

Done at Fairbanks, Alaska, this 25th day of February, 1955.

/s/ THEODORE F. STEVENS,
U. S. Attorney.

/s/ C. P. COUGHLAN.

[Endorsed]: Filed February 26, 1955.

[Title of District Court and Cause.]

RECEIPT

Receipt of a copy of the Deposition of Clarence E. Bohn, in the above-entitled cause, is hereby acknowledged this 16th day of March, 1955.

/s/ C. P. COUGHLAN.

[Endorsed]: Filed March 16, 1955.

[Title of District Court and Cause.]

ORDER RESETTING HEARING

Came Theodore F. Stevens, United States Attorney, and George M. Yeager, Assistant United States Attorney, representing the Petitioner; came C. P. Coughlan, the Respondent, representing himself.

Respective counsel stated that he was ready to go to trial.

The Court interrogated the respective counsel regarding the resetting of the trial of this cause.

Respective counsel orally stipulated that the trial of this cause be reset to follow the trial presently being had, No. 1985 Cr., United States of America vs. Douglas Joslyn.

Entered March 17, 1955.

[Title of District Court and Cause.]

TRIAL BY COURT

March 21, 1955

The Honorable George W. Folta, District Judge for the Third Division, present and presiding. The Petitioner was represented by Theodore F. Stevens, United States Attorney, and Philip W. Morgan, Assistant United States Attorney; the Respondent was present and represented himself in these proceedings.

Respective counsel presented opening statements to the Court.

Cornelius P. Coughlan was duly sworn as a witness for the Petitioner.

After direct examination by Mr. Stevens, the Court granted his permission for the Respondent to make statements to the Court regarding certain Identifications.

Came the respective counsel as heretofore; came the Respondent as heretofore, and the trial of this cause was resumed.

LaDessa Nordale was duly sworn and testified for the Petitioner.

The trial of this cause was continued until 9:30 a.m., Tuesday, March 22, 1955.

March 22, 1955

Came the respective counsel as heretofore; came the Respondent in person.

William M. Cartwright, Myrtle Bowers, Frederic Donhauser, and Ernest M. Hufford were duly sworn and testified for the Petitioner.

Recess to 1:30 p.m.

1:30 P.M.

Ernest M. Hufford, previously sworn, testified further in behalf of the Petitioner.

The Petitioner rested.

Robert Byers, Cyril Randell and George M. Sullivan were duly sworn and testified for the Respondent.

The Respondent, previously sworn, testified in his own behalf.

The Respondent rested.

Ernest M. Hufford, previously sworn, testified further for the Petitioner.

Both parties rested.

Respective counsel presented argument to the Court.

The Court took the matter under advisement.

March 23, 1955

Came the respective counsel as heretofore; came the Respondent in person.

The Court, Judge George W. Folta, presiding, having taken the matter under advisement on Tuesday, March 22, 1955, and now being fully advised in the premises, found that the Respondent had embezzled the sum of \$3,950.00 from the Silver Estate and that the testimony of the Respondent in regard to certain signatures on checks was false; that the defendant was an unfit person to practice law and is dishonest and should be disbarred, and directed that Findings of Fact and Conclusions of Law and Judgment be drawn accordingly.

It was further Ordered that the Respondent be suspended from practicing law pending the filing of the Judgment.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court having considered the evidence submitted by Theodore F. Stevens, United States Attorney as Petitioner, and Cornelius P. Coughlan, pro se, Respondent, and being advised in the premises, hereby, in conformity with Section 35-2-76 of the Alaska Compiled Laws Annotated, 1949, enters its Findings of Fact and Conclusions of Law.

Findings of Fact

I.

That the Respondent, Cornelius P. Coughlan, has committed a dishonest act as alleged in Count I of the Amended Information herein, in that the said Cornelius P. Coughlan, as the attorney for the Estate of Raymond Silver, deceased, converted to his own use the sum of Nine Hundred and Fifty Dollars (\$950.00), the same being the proceeds from a check received by Cornelius P. Coughlan from the Lomen Commercial Company in payment for an asset for said estate, said check having been cashed by Cornelius P. Coughlan on or about the third day of October, 1951.

II.

That the Respondent, Cornelius P. Coughlan, has committed a dishonest act as alleged in Count II of the Amended Information herein, in that the said

Cornelius P. Coughlan, as the attorney for the Estate of Raymond Silver, deceased, converted to his own use the sum of One Thousand Dollars (\$1,000.00), the same being the proceeds from a check received by Cornelius P. Coughlan, said check having been negotiated to the Bank of Fairbanks, Fairbanks, Alaska, and the proceeds thereof having been credited as follows: Six Hundred Dollars (\$600.00) to the personal loan account of Cornelius P. Coughlan with said bank and the remaining Four Hundred Dollars (\$400.00) having been deposited in the personal checking account of Cornelius P. Coughlan in said bank, on or about the 17th day of December, 1951.

III.

That the Respondent, Cornelius P. Coughlan, has committed a dishonest act as alleged in Count III of the Amended Information herein, in that the said Cornelius P. Coughlan, as the Attorney for the Estate of Raymond Silver, deceased, converted to his own use the sum of One Thousand Dollars (\$1,000.00), the same being the proceeds from a check drawn upon the account of said estate, said check having been negotiated to the First National Bank of Fairbanks by Cornelius P. Coughlan having endorsed the same and deposited the proceeds thereof in his personal checking account in said bank on or about the 12th day of January, 1952.

IV.

That the Respondent, Cornelius P. Coughlan, has committed a dishonest act as alleged in Count IV of

the Amended Information herein, in that the said Cornelius P. Coughlan, as the attorney for the Estate of Raymond Silver, deceased, converted to his own use the sum of One Thousand Dollars (\$1,000.00), the same being the proceeds from a check drawn upon the account of said estate, said check having been negotiated to the First National Bank of Fairbanks by Cornelius P. Coughlan having endorsed the same and deposited the proceeds thereof in his personal checking account in said bank on or about the 4th day of April, 1952.

V.

That the testimony of the Respondent, Cornelius P. Coughlan, with reference to his signatures on the several exhibits submitted by the Petitioner as known handwriting standards, is false.

VI.

That the testimony of the Respondent, because of his demeanor in Court and his testimony and statements to this Court, is entitled to no credence.

Conclusions of Law

I.

The provisions of Section 35-2-76, Alaska Compiled Laws Annotated, 1949, have required that this proceeding be according to the equity rules or as nearly in conformity therewith as possible. This Court is governed by the Federal Rules of Civil

Procedure but the above-cited provision of the Alaska Code is not in conflict with any of the provisions of the Federal Rules of Civil Procedure.

II.

The objections set forth by way of affirmative defenses are without merit.

III.

The Respondent, Cornelius P. Coughlan, is an unfit person to practice law and is dishonest.

IV.

The Respondent should be disbarred.

Done at Fairbanks, Alaska, this 23rd day of March, 1955.

/s/ GEORGE W. FOLTA,
District Judge.

Receipt of Copy acknowledged.

[Endorsed]: Filed March 23, 1955.

[Title of District Court and Cause.]

ORDER

This Court having entered its Findings of Fact and Conclusions of Law,

It Is Hereby Ordered, Adjudged and Decreed, that Cornelius P. Coughlan be, and he hereby is,

disbarred from practice as an attorney at law in the Territory of Alaska, from and after the entry of this order.

It Is Further Ordered, Adjudged and Decreed that Cornelius P. Coughlan shall not make application for reinstatement as an attorney at law unless said Cornelius P. Coughlan first demonstrates to this Court that he has, within six months from the entry of judgment herein, made full restitution, with interest, of the monies converted by him from the Estate of Raymond Silver, deceased, to the parties entitled to said restitution.

Done at Fairbanks, Alaska, this 23rd day of March, 1955.

/s/ GEORGE W. FOLTA,
District Judge.

[Endorsed]: Filed and entered March 23, 1955.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that Cornelius P. Coughlan, Respondent-Appellant above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final Judgment entered in this action on the 23rd day of March, 1955.

Dated this 24th day of March, 1955, at Fairbanks, Alaska.

/s/ CORNELIUS P. COUGHLAN,
Respondent-Appellant.

Service of copy acknowledged.

[Endorsed]: Filed March 24, 1955.

[Title of District Court and Cause.]

MOTION

Comes Now the Respondent-Appellant, above named, and respectfully moves this Court as follows, to wit:

That the Court fix the amount required for a supersedeas bond in the appeal taken by Respondent-Appellant to the United States Court of Appeals, Ninth Circuit, from the Judgment entered against him in this cause; and

That the Court permit the securities for said supersedeas bond qualify therefor at Fairbanks, Alaska, before the District Judge regularly in attendance at such place.

Dated at Fairbanks, Alaska, this 24th day of March, 1955.

/s/ CORNELIUS P. COUGHLAN,
Appellant-Respondent.

Receipt of copy acknowledged.

[Endorsed]: Filed March 24, 1955.

[Title of District Court and Cause.]

NOTICE OF HEARING

U. S. Attorney,
Fairbanks, Alaska.

Please take notice that the above-named Respondent-Appellant will bring on his Motion for fixing supersedeas bond on appeal at the hour of 9:00 a.m., March 29th, 1955, in the District Court Room, U. S. Court House, Fairbanks, Alaska.

/s/ CORNELIUS P. COUGHLAN,
Respondent-Appellant.

Receipt of copy acknowledged.

[Endorsed]: Filed March 24, 1955.

In the District Court for the District of Alaska,
Fourth Division

No. 7521

In the Matter of:

The Disbarment of CORNELIUS P. COUGHLAN,
Attorney at Law.

ORDER

Whereas, the Respondent-Appellant, after filing a Notice of Appeal, has filed a Motion for fixing a supersedeas bond in the above-entitled matter; and

Whereas, the District Judge normally holding Court in the Fourth Division of this District has disqualified himself in this cause;

Now, Therefore, It Is Hereby Ordered, That the Motion for fixing supersedeas bond on appeal be heard before the Honorable District Judge George Folta at the hour of 9:00 a.m., on the 29th day of March, 1955, in the District Court Room, United States Court House, Anchorage, Alaska.

Done this 25th day of March, 1955.

/s/ VERNON D. FORBES,
District Judge.

[Endorsed]: Filed and entered March 25, 1955.

[Title of District Court and Cause.]

STATEMENT OF POINTS

The points upon which Appellant will rely on appeal are:

1. The court erred in permitting Petitioner to file an Amended Information stating a different cause of action;
2. The court erred in quashing Respondent's subpoena duces tecum and notice of taking deposition;
3. The court erred in failing to prescribe the rules applicable to this hearing, after being properly requested to do so;

4. The court erred in hearing this matter without giving Respondent sufficient time to secure his expert witnesses from Seattle, Washington, and counsel from Juneau, Alaska, after Respondent had just completed his closing arguments in a week-long criminal trial in which he had been appointed by the court to defend an indigent defendant;

5. The court erred in not properly conducting the hearing below in a fair, proper or impartial manner, which prejudicially deprived Respondent of a fair trial;

6. The court erred in permitting Petitioner to introduce into evidence and rely upon the transcript of record, Petitioner's Exhibit . . .;

7. The court erred in permitting the introduction of evidence previously properly subpoenaed and not produced;

8. The court erred in wrongfully, improperly, arbitrarily and prejudicially limiting Respondent in cross-examination;

9. The court erred in wrongfully, improperly, arbitrarily and prejudicially limiting Respondent's defense;

10. The court erred in refusing to allow Petitioner to introduce Petitioner's Identifications "A" to "T," inclusive, into evidence;

11. The court erred in finding that Respondent had committed a dishonest act as alleged in each count of the Amended Information.

Dated at Fairbanks, Alaska, this 25th day of March, 1955.

/s/ C. P. COUGHLAN,
Respondent-Appellant.

Receipt of copy acknowledged.

[Endorsed]: Filed March 25, 1955.

In the District Court for the District of Alaska,
Fourth Judicial Division

No. 7521

In the Matter of:

The Disbarment of CORNELIUS P. COUGHLAN

Theodore F. Stevens, United States Attorney, of Fairbanks, Alaska, attorney for petitioner.

Cornelius P. Coughlan, respondent, of Fairbanks, Alaska, pro se.

Be It Remembered, that upon the 30th day of December, 1954, the above-entitled cause came on for argument before the Honorable Vernon D. Forbes, District Judge.

The Court: The Court will now take up the case of, No. 7521.

Mr. Stevens: I believe, your Honor, that is Mr. Coughlan's motion on it.

Mr. Coughlan: That is correct.

The Court: That is correct, and you wish to present it, Mr. Coughlan, at this time?

Mr. Coughlan: Yes, your Honor. I presume that is the first motion that was filed, the motion for production of documents under Rule 34, Federal Rules of Civil Procedure. [1*] I wish to state to the Court at this time that the respondent went to the City of Anchorage, Third Judicial Division, Territory of Alaska, for the purpose of obtaining expert services in preparation of his response in this matter and contacted one Don Cutter.

The Court: When was that trip, Mr. Coughlan? Excuse the interruption.

Mr. Coughlan: I believe that that trip was commenced on the 23rd, 23rd or 24th day of December, 1954.

The Court: Very well.

Mr. Coughlan: That the respondent returned to Fairbanks, Fourth Judicial Division, Territory of Alaska, with the expert witness for the purpose of examining and copying certain signatures; that at that time it was expected that Mr. Cutter would be able to remain in Fairbanks for a sufficient time to arrange his equipment and make preparations for taking the photographs; that in due course I attempted to contact Mr. Stevens concerning the matter for the reason that it was my belief that this matter had not been stipulated to in open Court fully on the previous day, that being the 22nd day of December, 1954, at which time the only articles mentioned were certain checks and exhibits appearing in Cause No. 1851 criminal before this Court. I was unable to contact Mr. Stevens and con-

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

tacted his Assistant, one George Yeager, and [2] explained the situation to him. Mr. Yeager was cognizant of the fact that Mr. Stevens, the United States Attorney for the Fourth Division, District of Alaska, had made some stipulation in regard to exhibits, but was unaware of any stipulation in regard to other matters which I agreed to be the fact. Therefore, I determined that it would be best to make a motion and procure an order from this Court in the absence of Mr. Stevens.

In the meantime, Mr. Cutter had to leave Fairbanks and will appear again at a later date in order to photograph these matters. Mr. Stevens called me last evening after regular office hours and informed me that he, of course, would have been perfectly willing to allow me to go ahead on that so it was just a case of it not having been taken up in Court before and so that there would be no misunderstanding in the absence of Mr. Stevens, I placed this motion.

Now, if the Court please, Mr. Stevens has agreed that these signatures or purported signatures of Mr. Donhauser may be photographed at any convenient time and he or one of his assistants should be present at that time. I think that that is sufficient under the circumstances. I brought that up only for those reasons that I have expressed here. There might have been some misunderstanding that Mr. Stevens had not stipulated in regard to those specific matters so in accordance with Mr. Stevens' stipulation I will pass that motion at this time. [3]

The Court: That is your stipulation, Mr. Stevens.

Mr. Stevens: That is my stipulation, Your Honor. However, I believe that I should inform Mr. Coughlan that in our discussion last evening I told him I would be perfectly willing to allow him to copy any of the signatures or for, or photograph any of the signatures of Mr. Donhauser which I had in my possession and I have gone through all the files in my office and the only documents I have which were signed by Mr. Donhauser are those which are in the file of the United States vs. Coughlan. I find I have many documents which purport to have been signed by Mr. Donhauser. Unfortunately, they are certified copies and they show only that there is the mark commonly put down by stenographers showing that it was signed by Mr. Donhauser. I would be glad to show those to Mr. Coughlan at any time, but I am afraid he will have to look further for those signatures. He thought we had some signatures of Mr. Donhauser including a bank record showing Mr. Donhauser's signature at the bank which to my knowledge we do not have.

Mr. Coughlan: Those things were in that file at one time. They might have been returned. In that case I would have to go further to procure them. They also had his college entrance application and college records with his signatures on them but, of course, they may very well have been returned some time ago. [4]

Mr. Stevens: I do not believe in any event there is a necessity for the order. Mr. Coughlan has

passed the order and I will agree to let him copy any signatures that we may have. He will have to rely upon my word, but I will go through the file to show him that we do not have them, if he wishes to do that.

The Court: Very well, it is understood at least. Now, we come to the motion of Mr. Coughlan for additional time in which to prepare his answer. Do you wish to be heard on that, Mr. Coughlan?

Mr. Coughlan: Yes, sir. As the Court knows, a discussion was held in open Court between the Court and the United States Attorney, Fourth Division, District of Alaska, on the 22nd day of December, 1954, in regard to the condition of the respondent in this case in respect to his ability to obtain local counsel. In accordance therewith the respondent journeyed to the City of Anchorage, Third Judicial Division, Territory of Alaska, for the purpose of obtaining counsel to assist him in preparing a defense or response to the information herein filed. The respondent contacted several attorneys of his knowledge in the City of Anchorage and because of their previous commitments and so forth, I was unable to procure the services of an attorney at this time.

I have requested the Court for an extension of time of approximately one month, to the 31st day of January, 1955, [5] during which time I should be able to obtain counsel and prepare my response. I don't believe that I can do it in any shorter time. I have borne in mind the Court's admonition that the Court did not care to see any unnecessary delay

of any kind whatsoever, that he wished to see this matter taken up as quickly as possible, and that I have stated in my affidavit and I state again that I honestly believe that that length of time is absolutely necessary for a preparation of this matter.

The Court: Mr. Coughlan, for the, to expedite matters I might make a statement. I am not trying to preclude you from making a full statement. You may go on as long as you wish, but I want to state at this time to Mr. Stevens that I am inclined to grant the extension of time unless there is some objection to it and good cause shown why Mr. Coughlan should not have up to and including the 31st day of January to reply, to answer.

Mr. Stevens: Your Honor, I believe as the Court does that this is a reasonable extension at this time. However, I call the Court's attention to the fact that following the 31st of January, we will become embroiled in civil trials, criminal trials and we would like to schedule this disbarment proceeding and to schedule it so we know when it will be and so we can subpoena our witnesses. Now, I am perfectly willing to agree with the Court and with Mr. Coughlan that he needs [6] until that date but I would like also to have an agreement with the Court and with Mr. Coughlan that the disbarment proceedings begin on a day certain. Now, a month to secure the services of an attorney and to have his handwriting expert make his analysis would seem a reasonable thing. He has shown that he is able to get a handwriting expert and he was up here and he will be available and it seems to me the 31st is on a Monday

in January, 1955, and that if Mr. Coughlan intends to file his answer by that time that we would like to have the Court's permission to make a day certain for the disbarment proceeding to begin and that would be the following Monday and I think that would give Mr. Coughlan a week after his answer to go ahead and prepare further. That would be five weeks from this coming Monday, actually would be six weeks, no, five weeks from this coming Monday, the 7th day of February, in 1955.

Mr. Coughlan: If it please the Court, I am perfectly amenable to that. The only thing I have in mind, I have nothing against that whatsoever, setting a day certain. The only matter that comes to my attention at this time is the attorney whom I procure or whose services I procure may have other commitments in another division. That is the only matter that I can think of here now. Now, I would be perfectly willing to stipulate at this time pro se that the United States Attorney set the matter on upon notification of the [7] attorney and if he has no previous commitments, actual commitments in a court of law there, that that be the way, the manner in which that be handled. Now, that date at this time, I would agree to have that marked at this time subject to that one thing only, that if the attorney is occupied in another Court then it would be rather obvious that he couldn't appear here if he had a prior commitment to a Court in his own division. That is the only thing I bear in mind and I don't say anything of that type will arise, but it might, so if Mr. Stevens has no objection to contacting the

person when I procure his services and tell him that that date has been marked by the Court, but I would like to, the Court to bear that in mind that I would hate to bind a man from another division who obviously has duties to that Court to any one date certain, absolutely, at this time. I would suggest if it is all right with the Court to mark that date and subject to foreign counsel or counsels from a separate division being able to appear at that time.

The Court: Well, I understand you have not retained anyone as yet?

Mr. Coughlan: I haven't been able to. A number of the attorneys were in Anchorage.

The Court: Can't you retain an attorney who will be available and able to——

Mr. Coughlan: In all probability I will, your Honor. [8] If he would be available to that particular day he would be available a day very close thereto. I am sure of that. No attorney is going to be that tied up on a calendar. I wish to state now, I am perfectly willing for a date to be set. I just wanted the Court to bear that one thing in mind.

The Court: The Court will grant Mr. Coughlan up to and including the 31st day of January in which to prepare and, prepare, serve and file his answer and we will fix the hearing or trial February 7, 1955, at ten o'clock in the forenoon. Is there anything further to consider?

Mr. Stevens: Not in connection with that case, your Honor.

United States of America,
Territory of Alaska—ss.

I, Mary F. Templeton, official court reporter for the aforementioned Court, do hereby certify that the foregoing pages numbered 1 to 9, inclusive, constitute an accurate transcript of my original shorthand notes of that portion of the oral proceedings had upon the 30th day of December, 1954, in open Court in Cause No. 7521.

Dated at Fairbanks, Alaska, this 24th day of September, 1955.

/s/ MARY F. TEMPLETON. [9]

In the District Court for the District of Alaska,
Fourth Judicial Division

No. 7521

In the Matter of
The Disbarment of CORNELIUS P. COUGHLAN

Theodore F. Stevens, United States Attorney, of Fairbanks, Alaska, attorney for petitioner.

Cornelius P. Coughlan, respondent, of Fairbanks, Alaska, pro se.

Be It Remembered, that upon the 3rd day of February, 1955, the above-entitled cause came on for argument before the Honorable Vernon D. Forbes, District Judge:

The Court: In the case 7521, the Court observes in the file a motion on the part of C. P. Coughlan based on four grounds and, Mr. Coughlan, as I understand this proceeding is under the provisions of 35-2-72 of the following statutes and Section 35-2-75 provides answer, grounds of demur may be taken by answer only. The answer shall be in writing and verified as to pleadings in civil actions. I wonder how you interpret that, Mr. Coughlan?

Mr. Coughlan: Yes, your Honor, I would like to state [1*] for the record that it has been held in this Court that all of the divisions of the District Court for the District of Alaska, are courts of the United States. Courts of the United States derive their jurisdiction and authority from the Constitution of the United States, which, I believe, the Court is aware, and the courts of the United States, including the District Court for the District of Alaska, are affected by Title 28, Section 2071, which specifies the rule making power of the courts of the United States in general.

Under Title 28, Section 2072, the rules of civil procedure are made applicable to the United States District Courts.

Under Title 48, United States Code, Section 103a, "Federal Rules of Civil Procedure applicable. The rules heretofore or hereafter promulgated and made effective by the Supreme Court of the United States under authority of section 2072 of Title 28, or under authority of any other statute, regulating the forms

***Page numbering appearing at top of page of original Reporter's Transcript of Record.**

of process, writs, and motions, and the pleadings, practice, and procedure, in actions of a civil nature in the district courts of the United States, and regulating appeals therefrom, shall apply to the District Court for the Territory of Alaska, and to appeals therefrom. June 6, 1900, c.786, ss 5a, as added July 18, 1949, c. 343, ss 1, 63 Stat. 445."

Title 48, United States Code, Section 80 reads, [2] "Legislature not to deprive judges, officers, etc., of district court of authority or jurisdiction. The legislature shall pass no law depriving the judges and officers of the district court of Alaska of any authority, jurisdiction, or function exercised by like judges or officers of district courts of the United States. Aug. 24, 1912, c.387, ss 3, 37 Stat. 512."

The aforesaid Section 2072, Title 28, reads, "Rules of civil procedure for district courts. The Supreme Court shall have the power to prescribe, by general rules, the forms of process, writs, pleadings, and motions, and the practice and procedure of the district courts of the United States and of the District Court for the Territory of Alaska in civil actions."

"Such rules shall not abridge, enlarge or modify any substantive right and shall preserve the right of trial by jury as at common law and as declared by the Seventh Amendment to the Constitution."

"Such rules shall not take effect until they have been reported to Congress by the Chief Justice at the beginning of a regular session and until after the close of such session."

"All laws in conflict with such rules shall be of no further force or effect after such rules have taken

effect. Nothing in this title anything therein to the contrary notwithstanding, shall in any way limit, supersede, or repeal any such rules heretofore prescribed by the Supreme Court. [3] June 25, 1948, c. 646, 62 Stat. 961, amended May 24, 194, c. 139, ss 103, 63 Stat. 104; July 18, 1949, c. 343, ss 2, 63 Stat. 446.”

Now, I believe the Court is well aware in this particular action is statutory, obviously passed by the legislature. What, then, is the, is the, and it provides for a particular rule. Therefore, your Honor, what is the authority of the Alaska Territorial Legislature? The Congress has delegated authority to the Alaska Territorial Legislature by ordinary acts, statutes of the United States.

Mr. Stevens: Pardon me, Mr. Coughlan. If the Court please, would the Court ask Mr. Coughlan to state for the record what book he is reading so we can check these citations?

Mr. Coughlan: This is merely my notes. I will give them to you if you want them.

Mr. Stevens: As the Court can, see, Mr. Coughlan has a book in his hand and I would like to have the citation if I may, sir.

Mr. Coughlan: This is a personal note book of mine. I will give it to him on this thing here. I mean, I am not trying to hide that or anything of that type. I thought every one was cognizant of these particular sections of the United States Code. They are not hidden. They have been promulgated for a long period of time. As far as interrupting my particular statement to the Court is concerned,

in order to elucidate [4] on the statutory availability of——

The Court: The reporter is taking this all down. You may proceed.

Mr. Coughlan: Of course, the Court recognizes such legislative enactments of this type that the Congress may withdraw its authority by the same type of act. An ordinary statute of the United States, ordinary enactment which they have done. They have clearly done here, when they made the Federal Rules of Civil Procedure applicable to this Court.

Nor, your Honor, under those particular circumstances alone there is authority for bringing this under a dismissal for the simple reason, or a motion to strike, for the simple reason that the Federal Rules of Civil Procedure provide for it. Anything to the contrary being repealed by specific act of the Congress of the United States, and I submit, your Honor, that that is an abridgement if it were allowed to stand, an abridgement of the rules, prerogatives and rights, etc., of this Court by an act of the Territorial Legislature that is specifically prohibited by law.

I believe to go further, that the Court understands that this is a, in the nature of a quo warranto proceeding, that specifically it is in the nature of equity by rules of that particular statute and I am sure that this Court is well aware of the rules pertaining to quo warranto; that the Court is also well aware of the rules pertaining to equity and that [5] under the circumstances, under these particular motions,

that they have traditionally and classically been allowed; and that is the answer to that particular part of the question.

As far as bringing this matter up at this time is concerned, as long as we are facing the referring to rules and jurisdiction of the Court in general, this Court is bound to be governed by some rules in this matter and they apparently are the Federal Rules of Civil Procedure. Now, Rule 6(b) of the Federal Rules of Civil Procedure provides for five days' notice upon a motion, notice of hearing upon a motion before it is set. Rule 5(e) provides for an additional three days if service is made by mail such as was the case here, your Honor.

Mr. Stevens: May it please the Court?

The Court: Mr. Stevens.

Mr. Stevens: We do not understand Mr. Coughlan's statement to the Court, particularly in view of Section 427 of the Alaska Compiled Laws which is an act of Congress appearing at 48 United States Code, Section 91. That section says nothing in Sections 21-24, 44, 45, 67-73, 74-90 and 145 of this title which is, which are the sections which preceded this section in the Alaska Code being sections passed by Congress and actually incorporated in the Alaska Code "shall be construed as to prevent the courts of Alaska from enforcing within their respective jurisdictions all laws passed by the legislature [6] within the power conferred upon it, the same as if such laws were passed by Congress, nor to prevent the legislature passing laws imposing additional duties, not inconsistent with the present duties of their

respective offices, upon the governor, marshals, deputy marshals, clerks of the district courts, and United States commissioners acting as justices of the peace, judges of probate courts, recorders, and coroners, and providing the necessary expenses of performing such duties.”

Now this Court enforces every day acts passed by the legislature of Alaska. The act before the Court today is the act which is Chapter 32 of the Session Laws of the Legislature of Alaska for 1941, and that appears, that act appears in the Alaska Code beginning at Section 35-2-71 and we are particularly concerned with Section 35-2-72 and in conformity with this law of Alaska, the court has ordered Mr. Coughlan to answer, and, too, that he would be heard by answer only in writing and verified as stated in the Code. And at a previous session the Court will remember that the Court entered an order which was consented to by both Mr. Coughlan and the government that he would file an answer by the 31st day of January, 1955, and that the hearing would continue on the 7th day of February, 1955. And that was assented to in open Court by Mr. Coughlan and he has now filed a motion contrary to his previous agreement with the government.

Now, we believe that the Code is specific. It gives a duty upon this Court which is not a duty to enforce an action [7] of a civil nature nor an action of a criminal nature. This is a quasi criminal action but it is also in a civil vein, and I call the Court's attention to Warner vs. State Bar which is one of the leading cases in California. It appears at 150

Pacific Second at Page 892 and on Page 893 the Court stated it has been repeatedly held, however, that disbarment proceedings are not governed by the rules of procedure governing civil or criminal litigation and in that case the Court held that the Code of civil procedure did not necessarily apply to a disbarment proceeding. And I call the Court's attention further to the fact that 35-2-76 of the Alaska Compiled Laws states specifically the hearing shall be according to the equity rules or as nearly in conformity therewith as possible; and the Court has great latitude in regard to a disbarment proceeding. This is an action wherein the Court is requested on behalf of the government to discipline a member of the bar and it is an action wherein the Court is actually hearing evidence concerning the actions of an officer of the Court and to determine whether or not that officer should be permitted to continue with his privilege of practicing law. We believe that the motion filed by Mr. Coughlan is out of order; it is contrary to the previous agreement entered into in open Court and that the same should be stricken even if the Federal Rules of Civil Procedure applied specifically to this action the legislature of Alaska has the authority to impose additional duties upon this Court and upon [8] parties before this Court: And this statute of the legislature of Alaska in 1941 goes further than any Federal rule of civil procedure because it states specifically that the grounds of demur may be taken by answer only. It is very specific. It goes further than any rule in

the Federal rules of civil procedure and we think that it is binding upon Mr. Coughlan.

We also state to the Court that we cannot understand how Mr. Coughlan could enter into the agreement with the Court and with the government and then escape the agreement and escape the provisions of the statute. We ask the Court to strike the answer, strike the motion and instruct Mr. Coughlan to answer forthwith and to inform Mr. Coughlan that the government has already subpoenaed witnesses to appear here on the 7th day of February, and we have every intention of continuing with the matter in accordance with the previous setting of this Court.

Thank you, your Honor.

The Court: I understand your position, Mr. Stevens, that you ask the Court to strike the motion. You therefore didn't comment upon the sufficiency or insufficiency of the notice of the hearing of the motion?

Mr. Stevens: The notice, your Honor, was filed in order to get Mr. Coughlan before this Court. I would call the Court's attention to the fact that Mr. Coughlan himself has not followed that rule in connection with a notice to the [9] government. He gave me notice to appear at one time on the following day, as I remember right, for a deposition. Maybe it was two days.

Mr. Coughlan: Your Honor, there is a different rule involved there. This is on motions only, Rule 6(d) and (e).

Mr. Stevens: The government's position is cate-

gorically that the Federal Rules of Civil Procedure could not, do not apply to this action. There is nothing in the Federal Rules of Civil Procedure that applies to disbarment at all; and the reason obviously is that the Federal Courts throughout the states do not handle disbarment proceedings on a matter of original jurisdiction. The attorneys before Federal rules courts in the states are members of the state bars before they may be admitted to practice before Federal courts. That does not apply to the District of Columbia or the Territory of Alaska. I call the Court's attention to the fact that Hawaii, as I am informed, the practitioners before the Court are members of the Hawaii bar. In the District of Columbia, I happen to be a member of that bar myself, and in order to be admitted to practice before the Municipal Courts of the District, one must be admitted to practice before the District Courts of the District of Columbia. There is a bar association, and there is an integrated bar is the word I am searching for. I believe that this proceeding is specific. It is not a civil action and it is not a criminal action. It is an action to [10] discipline, and it is specifically the disbarment or suspension section of the Alaska Code providing the means in which attorneys may be regulated by the Court, and I see no reason why we should have the Federal Rules of Civil Procedure entering into the situation, particularly when the statute states specifically that the equity rules apply and we have citations to show to the Court that that is a common provision in disbarment proceedings.

It is either the equity rules or the—in Arizona, for instance, the statute states specifically that the rules of evidence applicable to the Superior Court for Arizona shall be followed as far as practicable, provided that evidence may be admitted and considered which possesses probative value commonly accepted by reasonably prudent men in the conduct of their affairs. In other words, they say that the rules of practice before Arizona, apply, except that the Court may follow equity procedure. I believe that last sentence defines what is commonly known as equity procedure.

We do not consider that we are bound by any notice provisions in the Federal Rules of Civil Procedure. Also, Mr. Coughlan entered upon the scene; he appeared in answer to the motion and he raised his objections after he had appeared. I believe he had waived his privilege of refusing to answer, refusing to appear in answer to our notice, anyway.

The Court: This matter was before—— [11]

Mr. Coughlan: Your Honor, I answered those questions at the specific request of this Court. We have not entered into a motion or anything else to this point. The Court has merely been interrogating the attorneys. Now in that respect, I would like to make a few comments to the Court for the Court's own——

The Court: I think counsel is right, you were brought to your feet by a question of mine.

Mr. Coughlan: Yes, your Honor, very definitely, but your Honor, I would like to mention this; Mr. Stevens says we are not bound by the rules. What

rules is he bound by? What rules did he give notice under? Now, the Territorial statutes provides for much longer rules. He says you are bound by equity rules in here. What are the equity rules of this Court? What are the equity rules of this Court, your Honor? Only those provided by the Supreme Court of the United States and Act of Congress as provided for by the Constitution of the United States. Those are the only rules that are applicable here. Mr. Stevens says himself that this is a district form of action here. We don't find in other places, and yet he cites a California case which I admit is distinguished. It is very distinguished. It is an entirely different form of action. Entirely different.

Now, the question here at this time as I understand it, is raised by this Court, is coming into jurisdiction, and I [12] submit for the Court's own thinking in this matter that this is an action in the nature of quo warranto. I believe the Court is aware of that.

Number two, I believe that it is very evident that equity proceeding as a whole is going to apply here and it is equity rules of this Court. That is what is going to bind this Court. I believe that the Court is well aware that in this proceeding or any other special proceeding, rules must be followed in order to comply with the constitutional provisions in protecting the rights and immunities of the citizen regardless of whether he is a Court officer or not. Quo warranto, by the way, as Mr. Stevens pointed out, he says it is quasi criminal; at one time it was criminal. It is still criminal in form, very obviously so. The

statute here provides for an information. Now what information is there known to the common law? It certainly isn't defined in the statute. Therefore, it must be quo warranto since there is a provision as to civil rules. Quo warranto first arose in time immemorial. It has been known to the English law. It first appeared in the statutes in Edward the First. It was later abrogated in, I believe it was for William and Mary, and it has been known to the English law, under that section, through to the time of the passage of the judicial law. It is an ancient proceeding, your Honor. This isn't anything new. There is nothing mysterious [13] about it. One doesn't have to go to great lengths to determine, for instance in these particular matters brought to the Court's attention, that if an action is barred the Court has no jurisdiction. If an action is abated the Court has no jurisdiction. That has nothing to do with demur and as far as the Federal Rules of Civil Procedure are concerned, demur is done away with; you can't bring it up in an answer or any other way. It is done away with; but matters in disbarment and abatement going to the jurisdiction of the Court may be brought at any time. That is one of the most ancient rules of English law, and when they are that old, when they have been known for that length of time that their beginnings are not even recorded in the annals of the law, it would certainly be strange to have them warped at this time. Your Honor, I would submit a brief on this if the Court would want one.

The Court: The record shows that this matter

was last before the Court on December 30th. At that time both parties agreed that if the Court allowed additional time, respondent made a motion for additional time in which to answer the amended information. At that time the Court granted additional time and the respondent agreed, I believe the record will show that it was agreeable to him if he had until January 31st, 1955, in which to prepare, serve and file his answer.

Mr. Coughlan: Yes, sir, or otherwise plead, was it not, your Honor? [14]

The Court: And the hearing was at that time set by counsel for Monday, at ten o'clock, February 7, 1955. There is nothing in the, so far at least in the position of the respondent inconsistent with the previous agreement. He has not said that he does not intend to file his answer and be ready for trial on February 7, 1955, and I would like to clear up another matter, if I can at this time and that is whether or not the respondent at this time consents to or objects to the hearing of the motion. I didn't understand your position. You mentioned that you hadn't been served with a proper notice, but do you wish to go ahead with the hearing of the motion or do you, what is your position in that regard?

Mr. Coughlan: Well, I have more or less lost my train of thought here on account of the time involved, and so on and so forth. I have been out of town and I lost my train of thought here, but I notice that the Court has something set, what is it, a divorce this afternoon. Is that a divorce case this afternoon, your Honor?

The Court: It arose out of a divorce case.

Mr. Coughlan: It is prolonged?

The Court: Not, no, it won't be a long hearing. What do you have in mind, Mr. Coughlan?

Mr. Coughlan: What I wanted to say was this; I just wanted to get my agile facilities, agitated facilities, and I would be prepared. Even if I had a half-hour, I would be [15] prepared to come in on this.

The Court: I don't know what the program of the United States Attorney is but if we are going to adjourn this matter until this afternoon, I say if it is to be adjourned——

Mr. Coughlan: I am ready to go, your Honor, if I could have a little recess. More or less see where I stand here. You know what I mean, prepare myself a little bit. My mind has gone entirely off of what I was——

The Court: We will recess until 11:00 o'clock; satisfactory?

Mr. Coughlan: Yes, your Honor, that would be satisfactory.

The Court: Mr. Stevens, is that agreeable?

Mr. Stevens: We are at the call of the Court on this matter, your Honor.

The Clerk: Court is recessed until 11:00 o'clock.

(Thereupon, the Court took a recess until 11:00 o'clock, at which time it reconvened and the hearing on this matter was resumed.)

The Court: Counsel ready to proceed?

Mr. Coughlan: Ready, your Honor.

Mr. Stevens: Government is ready, your Honor.

The Court: The Court will be pleased to hear from you now, Mr. Coughlan, after the recess. [16]

Mr. Coughlan: If it please the Court, in the matter that is being called to the Court's attention and this cause arises out of a statutory enactment wherein the statute provides for the rules of equity be the rules binding upon this action. As this matter has come to the Court's attention on prior occasions and the point has been brought up constantly and the record is even now replete with reference to the various rules of equity, I would like for the record to call upon the Court at this time to see if the Court has an understanding of the rules of equity involved in this matter, whether they be the new rules as provided by the Federal Rules of Civil Procedure or the old Federal equity rules so that the argument now presented may be presented with some cognizance and allow the respondent to not mention the one that the Court feels is not applicable.

The Court: The Court has not ruled and does not rule at this time as to which rule shall be applicable to this proceeding.

Mr. Coughlan: Your Honor, at this time I would like to take up number one, my motion, the motion is to dismiss or strike the information filed herein for the reason that the same is barred by reason of a judgment having been obtained in a previous cause before this Court between same parties representing the same subject matter. [17]

In the records and files of the District Court for the District of Alaska, Fourth Division, this is found and contained an action entitled in the action Disbarment of Coughlan, Attorney at Law, 7462. A rather peremptory perusal of that particular cause of action will call the Court's attention and the Court may take judicial cognizance of the fact that there has been a dismissal therein. Under the particular rules of equity a dismissal in such an action bars any further action and that is so under either of the forms of rules applicable to this Court as the Court may deem fit to consider applicable herein hereafter. The former rules of equity before the Federal Courts made that absolutely the law and I am sure the Court is undoubtedly cognizant of the old rules of equity. That is also true in the new rules.

That, of course, brings up the question of abatement which the Court is indubitably cognizant of and, therefore, there is no need to mention it.

Number two of the motion to—does the Court wish me to run through these one right after the other?

The Court: That would be very well.

Mr. Coughlan: Two, to strike and dismiss the amended information herein for the reason that it calls, that it states a new cause of action entirely separate and distinct from the original information on file herein, contrary to rule and law in such cases made and provided. I would like to point to the [18] Court's attention that Chapter 72 of the Alaska Compiled Laws Annotated, Chapter 35 of the

Alaska Compiled Laws Annotated, 1949, does not make any provision for an amendment of an information. It is quiet thereon. A year ago the general provisions regarding the rules of equity must apply. I believe the Court is fully cognizant of the fact that under the rules of equity it is forbidden, absolutely forbidden, to amend a bill in equity so as to state a new cause of action. Under the rules now applicable in this Court, if the Court should now deem the Federal Rules of Civil Procedure applicable in this particular proceeding, said rules also prohibit such an amendment.

Paragraph three, dismiss or strike the entire cause for the reason that the Court has no jurisdiction herein as a result of the cause being statutory with the subject statute authorizing the same having been repealed. If the Court would take cognizance of the further argument that I made this morning in regard to the jurisdiction of this Court, I am not again going into the matter.

The Court: The Court will take cognizance of your previous argument.

Mr. Coughlan: And that will be included as a part of this argument on this motion?

The Court: Yes, Mr. Coughlan.

Mr. Coughlan: Paragraph four, or cause four here to [19] dismiss or strike the amended information for the reason that the right to maintain such a cause has been estopped by laches. I should like to refer to the Court the proposition that the rules of equity have since time immemorial recognized the subject of laches and I am sure that

the Court is cognizant of that fact and there is no need to take up the Court's time at this time by enunciating doctrines that are exceedingly well known.

Mr. Stevens: If it please the Court.

The Court: Mr. Stevens.

Mr. Stevens: I take it that Mr. Coughlan's first statement refers to the case which was filed by my predecessor, case No. 7462, filed in this Court and the order of dismissal filed by the Court, states that this respondent, Cornelius P. Coughlan, was on the 12th day of December, 1952, found guilty and convicted of four counts of embezzlement, a felony under the laws of the Territory of Alaska; that in reality the judgment of conviction of the above-named respondent was not entered until the 9th day of May, 1953; that the information filed in said cause was premature and the Court being fully advised in the premises it ordered that the cause be dismissed. Now, that is not a judgment on the merits. It is a dismissal due to a premature filing of a cause, certainly not a bar to further proceedings upon the part of the government under any rule that I am cognizant of. [20]

Now, as to Mr. Coughlan's second ground which states that this is a new cause of action entirely separate and distinct from the original information on file, I call your Honor's attention to the fact that this cause was originally filed under the law stating that Mr. Coughlan had been convicted of four counts of the crime of embezzlement and that he should be disbarred because he had violated his

oath, duties and obligations as an attorney at law and was guilty of unlawful misconduct in practice of the profession. It was stipulated that an amended information be filed, the stipulation being entered into by both Mr. Coughlan and T. N. Gore on the 25th day of June, 1953, and such amended information was filed. On that amended information, an amended order was filed that Mr. Coughlan answer the amended information and the Court at that time, on the 25th day of June, 1953, called Mr. Coughlan's attention to the fact that, you should note all grounds of demur should be taken by answer only and in the event you fail to so appear and answer, judgment for removal as attorney at law will be entered against you pursuant to the provisions of Sections 35271 to 35277 of the Alaska Compiled Laws. On the 2nd day of July, 1953, Mr. Coughlan filed a motion for extension of time in which to plead. That motion was never noticed on for hearing. It was received in our office on the 6th day of July, 1953, and at that time, as the Court is cognizant, or as the Court is aware, I believe, an appeal was [21] pending from Mr. Coughlan's former conviction in this Court on the felony charges. This matter was filed in this Court as an amended information following a reversal by the Ninth Circuit Court of Appeals of the conviction on technical ground, on two technical grounds. The merits of this case were not reviewed by the Ninth Circuit and it was decided that the counts should be amended, the information should be amended to include the substantive charges filed in the felony

indictment against Mr. Coughlan. We filed this amended information in this proceeding so that the record would be clear to show that the disbarment action had actually been continued at his request.

According to the Court's order he had failed to file an answer on the day set within ten days from the 25th day of June, 1953, and any time the order of disbarment could have been entered pursuant to that order. The Court saw fit to continue the matter on Mr. Coughlan's own motion. We have filed this amended information and, according to the laws of Alaska, have gone through every procedure which would be necessary if we had filed an original information. We gave Mr. Coughlan notice. We gave him ten days to file an answer upon the government. We have given him an extension of six weeks in which to further consider the matter. He has been fully informed all along and I call the Court's attention that pursuant to Section 35-2-73, leave of the Court is not required to file an original information and when a situation is presented such as this that the ground upon which the original [22] information was filed, namely, conviction of a felony, has been charged due to a reversal by a superior court that the government has merely followed the procedure of amending the information to state rather than the conviction of the felonies that the acts set forth in the indictment were in fact committed by Mr. Coughlan and that, therefore, he should be disbarred for those acts in themselves placing the burden on the government at this time to prove the acts as they were proved in the

criminal action. Now, in the case of Warner vs. State Bar, which I previously cited to this Court this morning, 150 Pacific Second, page 892. The same procedure was followed by the State of California. The defendant Warner had been tried three times; on the first trial the jury disagreed; on the second trial there was a judgment, a verdict of guilty and the judgment was reversed in the court of appeals. On the third, Mr. Warner was again convicted but the judgment was again reversed. Now, the State Bar instituted proceedings against him after his third conviction charging that he had been convicted of a felony. When this conviction was reversed, the notice to show cause was amended and I am quoting now from the decision at page 893, "after the conviction was reversed, the notice to show cause was amended to charge that the petitioner made the offer to McNeal with the intention of defrauding him. In other words, the information was changed to charge the substantive acts rather than to charge that the defendant Warner had been [23] convicted of a felony, and the Court held that it was permissible to go ahead and proceed against the petitioner in this case, Mr. Warner, and we believe we have followed the same procedure and offer the Court that case for precedent in this action.

Now, the acts charged in the former information, that Mr. Coughlan had been found guilty and convicted of four counts of embezzlement are the four counts charged in this amended information and those counts were formerly contained in an indict-

ment, cause 1651, before this Court and we believe there is no surprise. Mr. Coughlan has not been taken off, or caught off guard on this matter. We have given him ample time and the government rather than open a new file has merely filed an amended information, one which we needed no permission from the Court to file a new information for. We do not see that the second ground has any substance.

As to the third ground, I would call the Court's attention to the fact that Title 28, Section 2072 of the United States Code, states that the Supreme Court shall have the power to prescribe by general rules the forms of process, writs, pleadings and motions and the practice and procedure of the District Courts of the United States and of the District Court for the Territory of Alaska in civil actions. This is not, your Honor, a civil action. This is a disbarment proceeding pursuant to a specific statute of the Territory of Alaska. It [24] is an action which is entirely distinct from any other type of action which could be presented before this Court. I do not believe that it is really a quo warranto action because we are not questioning Mr. Coughlan's right to be an attorney. We are questioning whether or not when he acted as an attorney he acted in accordance with the standard set up by the Territory of Alaska.

Now, there are cases which have decided that the rules made by the Supreme Court in furtherance of Section 2072 of Title 28 have not enlarged the jurisdiction of this, any Court, nor may they en-

large the jurisdiction of the Court. They may not decrease the jurisdiction of this Court, either, your Honor. The Territory of Alaska has specifically conferred jurisdiction upon this Court to hear this type of an action. It has set forth specifically the rules which must be followed. It has set down the procedure which must be followed and we believe that the Federal rules of civil procedure cannot change that. At least the act of the Territory of Alaska setting up the disbarment proceeding is not in conflict with the Federal rules of civil procedure. It extends the jurisdiction of this Court. It extends the rule-making and procedural powers of this Court and tells the Court what rules it must follow and as such we believe that the third section which states that the Court has no jurisdiction of this cause because the subject is statutory and the statute has been repealed is of no weight. [25] As a matter of fact, the statute has not been repealed. Chapter 32 of the Session Laws of Alaska of 1941 is still in effect.

Now, as to the fourth count which states that we are barred by the laches, there are cases, and we would be prepared to give them to the Court, we have them ready for the disbarment proceeding, which state there is no statute of limitations nor laches which bars the government from proceeding against an attorney for disbarment and, further, this action has been pending since the 2nd day of July, 1953, specifically due to the request of the respondent who moved the Court for an extension of

time in which to plead. He has never answered the first amended information. He has never moved against it. It has been pending and we merely filed another amended information. He has now filed a motion against that and I believe the Court can check with the court reporter and will find that on the 30th day of December this Court ordered Mr. Coughlan to file an answer and serve the same upon the government by the 31st day of January, 1955; and the further order that the hearing would take place on the 7th day of February.

Now, Mr. Coughlan, by filing this motion, would seek to upset not only the Court's order but also the Court's order in regard to the answer but also the Court's order in regard to the setting of the disbarment proceedings if we must follow the Federal Rules of Civil Procedure and I am certain that that is not what was intended by the Federal Rules of [26] Civil Procedure nor by the legislature of the Territory of Alaska when it stated that the answer, and I am quoting from Section 35-2-73, the answer in this case, let's see, I am not quoting exactly, just a minute. It states upon the filing of the information the Court shall make an order requiring the accused to appear and answer the information within ten days after service upon him of a copy of the information and of the order unless for good cause further time is allowed. Now, in that section, following that section the Court granted Mr. Coughlan for good cause six weeks and we have now come within four or five days of the day set for the hearing and we believe that Mr. Coughlan has not followed the Court's order and

that the motion which is not in conformity with the Court's order should be stricken from the records and the motion thereby denied and that Mr. Coughlan be ordered to file his answer forthwith or that the Court shall proceed pursuant to Section 35-2-76 which states that upon a confession of guilt or refusal to answer the charge the Court shall proceed to judgment of removal or suspension. We believe that Mr. Coughlan has in effect refused to follow the order of the Court on three separate occasions. He has never complied with the Court's predecessor in office, the Honorable Judge Pratt, who ordered that he file an answer within ten days after the 25th day of June, 1953. He did not file an answer on the original matter which was cause No. 7462. In that case also Mr. Coughlan filed a motion [27] which was denied.

Mr. Coughlan: Just one moment, as long as you are making reference there, I believe that the reference will show that that motion was not denied. It was denied and when the Court discovered that he was in error it was changed.

Mr. Stevens: The records of my office show that the motion of Mr. Coughlan's case, the second case to quash and dismiss 7521, was denied upon the 5th day of June, 1953. The file further shows that following that decision Mr. Coughlan and Mr. Gore entered into a stipulation——

Mr. Coughlan: Are you referring, you said 7462 before?

Mr. Stevens: That's correct. There was one in 7462. There was another one in 7521.

Mr. Coughlan: In that case the Court took it under advisement at the District Attorney's request.

Mr. Stevens: Well, if I am in error, 7462, your Honor, the motion was made. Mr. Coughlan did not answer that order. He did not answer the original order of the Court although in this case although the motion to quash and dismiss was denied on June the 5th, he had a further order on the 25th day of June, 1953, to file his answer within ten days. He did not follow that order. He has had a further order of this Court to file his answer and the Court granted him an extension of time and no answer was filed on the 31st day of January, 1955. [28]

We believe that there has been no laches on the part of the government. We attempted to go ahead with this matter. Mr. Coughlan himself has been dilatory, has refused to follow the Court's order and to conform with the laws of Alaska and we ask again that the Court strike the motion or deny the same because even if the motion were permissible it has no sufficiency and further that the Court tell Mr. Coughlan that he should, and order Mr. Coughlan that he should answer forthwith because the day has passed upon which he should have filed an answer upon the government and the Court's order again I state that the stenographer has looked up the original notes on December 30th, 1954, and the Court stated that Mr. Coughlan should file and serve his answer upon the government and Mr. Coughlan agreed in open Court to that procedure.

Thank you, your Honor.

Mr. Coughlan: Your Honor, in reply to that, just

one little thing I would like to say for the record that Mr. Coughlan, the respondent herein, is and has been for some time through this whole history of actions and counteractions greatly confused and jeopardized in his ability to form an answer due to the fact that Mr. Coughlan is unaware of what rules he is to answer under. Now, I should like to call to the Court's attention as long as it has been brought up by the United States Attorney that this Court has previously recognized the rule of abatement and under that rule of abatement there [29] was a dismissal brought before this Court. I might state for the record and I could place Mr. Hall on the stand because I imagine that his memory is very good along that line, I was incarcerated in the Federal jail, Fairbanks, Alaska, and was not allowed, shall we say, egress, in order to obtain the proper materials to submit a written answer. I was brought into Court and I made an oral answer and as a result of that oral answer the Judge at first denied the answer; subsequently after thinking it over he stated to the Court here that he had looked in open Court, that he had looked up the law of abatement, that he was not previously aware of that the respondent was correct and that the information should be dismissed. It was after, it was thereafter dismissed to my knowledge. It was on the Court's own volition. I see by this record that the United States Attorney at that time, who apparently looked up the law on abatement, filed a motion for dismissal of his own volition. Now, I might bring to the Court's attention that this matter was

all brought up at that particular time; that the Court recognized that particular element and Mr. Stevens himself refers to Section 35-2-72, Alaska Compiled Laws Annotated, 1949, which is divided into numerous sections. Each one of those sections specifically stating a statutory ground separate and distinct for removal from the office of attorney at law. Each one of them is separate and distinct. They are enumerated by statute as being separate and distinct. [30]

The original information herein brought under, I believe it was Section 1, at any rate, it is the Section of 35-2-72, Alaska Compiled Laws Annotated, 1949, referring to conviction of a felony. Specifically referring to conviction of a felony. Now, I don't know what rules of equity we are following here but whatever rules they are as long as they are equity prohibit the filing of a new complaint stating a new cause of action. That is the one thing that I would like to impress upon the Court since the United States Attorney completely skirted that particular aspect of the question. The rest of it, I believe, was well stated for his side.

The Court: The Court at this time will grant the government's motion to strike the motion of the respondent, dated January 30, 1955, without prejudice, however, on the part of the respondent to urge any of the matters set forth therein in his answer. The Court doesn't know and it is likely that the defendant has prepared and is ready to serve and file his answer which was requested to be

filed by the 31st day of December. Do you have your answer prepared?

Mr. Coughlan: I have an answer, your Honor. However, I don't believe it is necessary under the Federal Rules of Civil Procedure which I believe this Court is bound by. The present motion herein constitutes an answer under the rule. Being mislabeled makes no difference. They are an answer. Therefore, it states the general denial of the [31] proposition.

The Court: Does counsel wish to rely on the motion as being an answer?

Mr. Coughlan: Well, I don't believe it is whether I wish to rely or not. I think it is the rule of the Court that makes it such. In other words, if it is, if it controverts the matters set out and it would certainly be in the form of an affirmative defense and based upon the general denial you are going to be placed, the burden is going to be placed upon the government to prove their case so if the Court, if that is amenable to the Court and the United States Attorney it is my understanding of the rules and the numerous cases referring thereto in the Federal Rules Decisions, I believe that there has been an answer here since the day that was previously prescribed by the Court.

The Court: Well, does Mr. Coughlan wish to have the motion construed as an answer?

Mr. Coughlan: An answer and a general denial, yes, your Honor.

The Court: And you wish to file no further answer?

Mr. Coughlan: No further answer, your Honor.

The Court: Mr. Stevens.

Mr. Stevens: I call the Court's attention to the fact that the order was that the answer shall be in writing and verified as pleadings in civil actions. This——

Mr. Coughlan: Rule 11 of the Federal Rules of Civil [32] Procedure, your Honor, do not require verifications before this Court.

Mr. Stevens: I believe if Mr. Coughlan would be patient and permit the government to continue, your Honor, this matter is before the Court under a specific statute. The Court has previously ordered Mr. Coughlan to answer in writing only and that the same should be verified as pleadings in civil actions and the Court may take special notice of that section because it says as pleadings in civil actions. This is not a civil action. There is a comparison there to civil actions. Now, if Mr. Coughlan wishes to appear and swear that he controverts and enters a general denial of this matter and the Court wishes to permit Mr. Coughlan to go ahead and proceed with the disbarment hearing I can see that no one is prejudiced thereby other than Mr. Coughlan himself because he has failed to get on record any facts which might be an answer or might provide grounds of demur in accordance with the statute. The motion he has filed is not verified according to law and I feel that he would have no standing in a higher Court to raise a question concerning the sufficiency of the action or the proceeding when he refuses to comply with the Court's order. For that reason we

do not object to his proceeding on February the 7th as scheduled with the hearing, the disbarment hearing, on the basis of the papers he has already filed. I must state to the Court, however, that it appears to me that his refusal [33] to answer the charge could well be interpreted by a higher Court to justify this Court in following the Section 35-2-76 and proceed to enter a judgment of removal. Now, if Mr. Coughlan wishes to protect the record in order to protect his own future, that is his business. We believe the government's case has been stated and that we are within our rights in stating them in the fashion that we have and we ask that the Court order that the disbarment hearing proceed on February the 7th and I state to the Court and to Mr. Coughlan that the government has already served the summons upon the witnesses who are to appear for the government in accordance and in reliance upon the Court's order that the hearing shall take place on February the 7th.

Thank you, your Honor.

Mr. Coughlan: Your Honor, I would like to make a statement for the record at this time; that the reason that the respondent has at this time referred to the Federal Rules of Civil Procedure in such cases made and provided by law on rule promulgated by the Supreme Court of the United States in order again to ascertain whether this Court is bound by the Federal Rules of Civil Procedure or not in this matter. Now, the Federal Rules of Civil Procedure in Rule 11 specifically states that the answers do not have to be verified. Now,

under those circumstances and in two previous cases that I know of in this Court in which there have been conflicting views upon that subject. I would like very much in order to make a [34] determination of my rights here and the jeopardy in which I am placing myself that the Court make a statement in regard to which rules we are going to follow. I really don't know. That has been the one thing on the numerous times that I have appeared before the Court here in this action and previous actions, I have constantly, constantly attempted to find out what rules we are bound by. I have been running around in circles, your Honor. I don't know where we stand, and not knowing where I stand I really can't, couldn't, I don't believe, be expected to make any kind of determination of whether I have to verify this or not. In other words, how can I, how can I decide that if I don't know what the Court is going to require. If the Court wishes to order me to verify then, of course, I will go, this is the old rules of Federal equity procedure. If the Court says no, then I automatically assume that this is going to be under the Federal Rules of Civil Procedure now applicable in this Court or if the Court so states that it will be equity rules formerly enforced in the Territory of Alaska. Somewhere along the line we are going to have to pick up some kind of a rule to go by before this Court. I just wish that to be in the record, that I have been absolutely at a loss and I don't know what to do.

The Court: What you say is in the record, Mr. Coughlan.

Mr. Stevens: If I may call the Court's attention again to the fact that the proceedings as set forth by the Alaska Code states that the answer to the information must be filed [35] in ten days. The Alaska Code specifically refers to disciplinary proceedings. This is in Section 35-27-2. The Code also states that the answer shall be verified as pleadings in civil actions. I do not believe that Mr. Coughlan has the, has adopted the correct procedure in demanding that the Court rule at this time on what rule is applicable to these proceedings because he is under a Court order to proceed in accordance with the Court's order. The time was extended so that he had more than ten days to answer regardless of whether the civil rules are applicable or not. It is the government's position that they are not applicable but I do not see that the point has actually come into issue at this time and the Court has granted our motion to strike because that motion of Mr. Coughlan's is not in accordance with the agreement entered into in open Court and the order of this Court based upon that agreement and we believe that any statement by the Court would be in effect a declaratory judgment as to what rules are applicable. Again I call the Court's attention to the fact that Mr. Coughlan has been reading from a brief filed in the Ninth Circuit Court of Appeals in an action which I have no knowledge of. It is not a private notebook as stated by Mr. Coughlan. It is a brief.

Mr. Coughlan: It is a private, private notes from which I have been reading certain matters that have

been brought up. Where they come from is of no concern.

Mr. Stevens: But the statements from that [36] brief, your Honor, have been to the effect that the Federal rules apply. I do not wish the Court to be misled by that brief. If I had the opposing brief I might read from it also and the Court would face the problem which is undoubtedly before the Ninth Circuit in another case, but we believe the demand to make the Court rule on this issue is premature at this time because, in any event, Mr. Coughlan's rights have been protected under both the Alaska Code and the Federal Rules of Civil Procedure to this date.

Thank you, your Honor.

The Court: The government has, I think, implied at least that the respondent has refused to answer. I don't understand his position as one of refusal. He has contended that his motion is adequate for an answer. If he wishes to rest on that that will be his decision.

Mr. Coughlan: Well, your Honor, does the Court believe that it would be better that a verified pleading be—here is the situation—

The Court: I want you to understand, Mr. Coughlan, so to try to clear up things one at a time that the Court struck your motion under the clear provisions of Section 35-2-75 which is, as I previously said, provides that the grounds of demur may be taken by answer only. The answer shall be in writing and verified as pleadings in civil actions and that should indicate to the respondent that this

proceeding is taken [37] under the Alaska Code and that is one of the provisions and that should be very clear.

Mr. Coughlan: Then, in that case, your Honor, I am going to take advantage of the opportunity to file an answer, verified and an answer in conformance with the equity provisions of the Alaska law.

The Court: And how much time, Mr. Coughlan?

Mr. Coughlan: I will file it today, your Honor.

The Court: Very well, you will be permitted to file it today.

Mr. Stevens: No objection, your Honor.

The Court: And the case will proceed to trial as originally set on Monday, February 7, 1955, at 10:00 o'clock unless for good cause shown at this time.

Mr. Stevens: Thank you, your Honor.

The Court: Is there anything further?

Mr. Stevens: Nothing further from the government.

The Court: Do you have anything further, Mr. Coughlan?

Mr. Coughlan: No, your Honor, I have not.

The Court: Very well. When is our next order of business, Mr. Hall. [38]

United States of America,
Territory of Alaska—ss.

I, Mary F. Templeton, official court reporter for the aforementioned Court, do hereby certify that the foregoing pages, numbered 1 to 38, inclusive, con-

stitute an accurate transcript of my original shorthand notes of that portion of the oral proceedings had upon the 3rd day of February, 1955. in open Court in Cause No. 7521.

Dated at Fairbanks, Alaska, this 29th day of September, 1955.

/s/ MARY F. TEMPLETON. [39]

March 20 and 21, 1955

(Be It Remembered, that at 3:20 p.m., upon the 20th day of *May*, 1955, the trial of this cause, No. 7521, was begun, petitioner represented by counsel and respondent, pro se, the Honorable George W. Folta, District Judge, presiding.)

The Court: Do counsel wish to outline their cases.

Mr. Coughlan: Your Honor, I would like an opportunity to approach the bench for a moment. I have a statement to make that, I think I prefer to make at the bench. May I approach the bench, your Honor?

(Thereupon, the attorneys approached the bench and the following proceedings were had.)

Mr. Coughlan: If it please the Court, I have just finished a case which I didn't anticipate lasting this long. I don't have my records here and I would like to have a little time for the, if the Court would like to feel my head here, I am running a fever and I have been attending a Doctor here and the reason

why I have asked to approach the bench in this particular matter is this, I am having a rectal discharge of puss that apparently has originated from an automobile accident that I was in in September. I have been running this temperature and I would like to have the opportunity to go over to see the Doctor about it in a few moments. It has been quite embarrassing to me. This has been occurring and reoccurring. There is no way to prevent it through self-control or anything like that. It has been occurring and I, I have been running a rather high temperature. I think if the Court wishes to do [2*] so I think he can feel my head and ascertain that fact.

The Court: Well, I am no doctor. I am not going to start doing anything like that.

Mr. Coughlan: I just offered the opportunity if you might wish to do so.

Mr. Stevens: I was informed Mr. Coughlan went to see the doctor at noon, your Honor. I don't know anything about the facts of the matter. I believe it would be discretionary with the Court and we would abide by the Court's decision.

Mr. Coughlan: I did go to see the doctor, I might add, at noon and I was supposed to come back at a later time here today.

The Court: I can't grant a continuance. I have a deadline to meet in Anchorage, litigants, witnesses, attorneys from the States. I assured them I would be there on the 24th. If you feel no better, of course, this evening, why, you can see a doctor,

***Page numbering appearing at top of page of original Reporter's Transcript of Record.**

but I think we had better go on. There has been enough delay.

Mr. Coughlan: Yes; well, your Honor, might I have ten minutes to get my file?

The Court: You may have this file.

Mr. Coughlan: Beg your pardon?

The Court: You may have this file.

(Thereupon, the attorneys withdrew from the bench and the following proceedings were then had.) [3]

The Court: Are counsel ready to outline their cases or do they want to proceed without making an outline?

Mr. Stevens: If it please the Court, I have just filed with the Clerk a small memorandum which sets forth the background of the case from the records and states the government's position on several of the issues raised by Mr. Coughlan in the past. This Court is not aware of the, some of the motions made by Mr. Coughlan. We are prepared to summarize the case.

The Court: Well, all I am inquiring is whether counsel wishes to make an outline of their cases. If so, now is the time to do it.

Mr. Stevens: Yes; we would prefer to do so.

The Court: Very well, you may make your outline of the case then.

Mr. Stevens: Your Honor, this is a continuation of a disbarment proceeding which was originally set forth or instituted in 1953 by a predecessor in my office. The disbarment at that time was filed on the

specific ground that Mr. Coughlan had been convicted of a felony, actually of four felonies, in four counts of an indictment before this Court. That disbarment proceeding was continued at Mr. Coughlan's request pending the appeal to the Circuit Court of Appeals of the criminal case.

The criminal case was reversed by the Court of Appeals on four technical grounds. We have amended our [4] information in this case to set forth the four substantive offenses which Mr. Coughlan was alleged to have committed in the indictment before this Court in the criminal case. The government is of the opinion that the parties before this Court are the same and that the issues before this Court are the same and that there is ample precedent for the position that the record of the criminal case is admissible before this Court and that we shall request the Court to admit the portions of the record which are pertinent to establish the four offenses we have set forth in our amended information. We believe that this disbarment case is not an adversary proceeding, that it is not a criminal trial nor is it a civil trial. This is *sui generis*; that the court is acting through its inherent power and also under the statutes of the Territory of Alaska to discipline this attorney for the charges brought against him, if the Court finds that the offenses were in fact committed.

If the Court would examine the record it would, your Honor will see that a stipulation was entered into between Mr. Coughlan and myself that the deposition of a handwriting expert from Washing-

ton, D. C., could be taken and the deposition has been taken and returned to the Court as an official document. We intend to offer that deposition as testimony to establish the government's position that Mr. Coughlan endorsed the checks in question, which were four checks drawn upon the account of the estate of Raymond Silver [5] which Mr. Coughlan was the, in which Mr. Coughlan was the attorney for the administrator. The government's position is that Mr. Coughlan, acting as the attorney for the administrator, was entrusted with several checks which were signed in blank by the administrator when he left to go to the States; that Mr. Coughlan used three of these checks, made them out in an amount of one thousand dollars and endorsed the checks payable, he endorsed three checks on the back thereof and presented them through normal channels into the banking channels and that he received the value for the checks.

The fourth check is a check in the amount of nine hundred fifty dollars from the Lomen Commercial Company in Nome which was payment for a truck which Mr. Coughlan asked special permission of the Commissioner to sell ahead of the final accounting and that that check also payable to Mr. Coughlan as attorney for the estate was cashed by him and that the total amount of three thousand, nine hundred fifty dollars was appropriated by Mr. Coughlan to his own use.

Mr. Coughlan has in the past argued that we must conform completely with the Federal Rules of Civil Procedure which the government has not done and

we have not done so because the Code says specifically that this proceeding shall be according to the equity rules or as nearly in conformity therewith as possible. We believe that as set forth in this memorandum that the equity rules referred to are the equity rules set forth in our Code; that the Federal Rules were adopted in [6] 1948 and not applicable until 1949. They were in effect when the Territorial Legislature passed this bar act and were not referred to specifically. They were not applicable in the Territory of Alaska and we do not believe they are applicable to this situation by inference specifically due to the fact that they were not adopted until the Act of July 18, 1949, and it was held in *United States v. Twelve Ermine Skins*, that the case in the Third Division in 1948, that the rules were not applicable to the Territory of Alaska prior to their adoption formally.

Mr. Coughlan has argued that this is a quo warranto proceeding and that we must thereby be limited. We have pointed out in this memorandum that quo warranto, that has been abolished and this is a case in which it might have been used prior to that act. However, we think that the disbarment and suspension provisions of our Code, Sections 35-2-71 to 35-2-77 of the Code of 1949 are very specific in setting forth the procedure which must be followed in this type of a proceeding and we intend to be governed thereby.

As far as the specific evidence to be presented to the Court, we have the two checks, two of the checks

in question are in our possession. Two of the checks which were checks in the amount of one thousand dollars were not recovered in the original form. Photostats of those checks were obtained from microfilm in the possession of the bank of Fairbanks. Those checks were presented here in Court during [7] the criminal trial and there was a lengthy cross-examination by Mr. Coughlan in person of the people who presented that evidence before the Court. The blow-ups or the photostats of the microfilm are before the Court. The originals were never recovered, your Honor. They were part of the files of the estate of Raymond Silver which was in Mr. Coughlan's possession and when the file was recovered only two of the checks were there. The other checks were traced through the bank account and microfilm recovered which showed the transactions and showed that the checks had been presented and endorsed in the same manner of which the one check we did recover. We did recover the nine hundred fifty dollars check, Nome, and one of the one thousand dollar checks. We do not have the other two original checks. We believe, however, that proof of the two checks which we do have would be sufficient to warrant this Court to disbar Cornelius Coughlan. The proof before the Court will consist of the testimony as we have said which has already been transcribed in connection with this case. We have a set of documents which we intend to establish as known handwriting standards of Cornelius P. Coughlan and the two checks which we have in the original form are the two

questioned documents which were passed upon by the F. B. I. in their handwriting analysis. The F. B. I. refused to pass upon the photostats stating that the photostats were insufficient for comparison purposes and they would make no comment with regard to the endorsements on those [8] two checks. That finding was transmitted to us this past week and we have not any handwriting analysis as to the endorsements appearing on the back of the photostats of the microfilm.

As I understand it, it would be impossible to obtain handwriting analysis of that type of evidence. However, the evidence in itself speaks for itself, your Honor, in that we shall show the record shows that the manner in which the money which was received for the checks was disposed of. It was placed into Mr. Coughlan's account, into his personal account and we believe that the evidence presented to the Court in the criminal case is sufficient to substantiate the charges here.

We have authority for our position in requesting the Court to consider this record and we also intend to request the Court to exercise its discretion to permit us to call Mr. Coughlan himself to the stand. We have cases starting with the landmark case of Arthur C. Vaughn in California——

The Court: You don't have to cite any authorities in support of a proposition of that type.

Mr. Stevens: We intend to follow that procedure, your Honor. That is the general background of the government's case and I cannot estimate at this time the length of time it will take, your Honor.

Mr. Coughlan: If it please the Court, in giving a resume of the pleadings and former actions prior to this date, [9] I should like to call the Court's attention to the fact that Cause No. 7462 was founded in this Court in the matter of the disbarment of Cornelius P. Coughlan, attorney at law. That proceeding was filed in May of 1953 and was dismissed. Thereafter, information was signed United States Attorney McNealy.

The Court: I am not interested in the history of this case. All I want to know is an outline of the, of your case as well as that of the United States.

Mr. Coughlan: Yes, your Honor, I wish to merely call one particular factor to the Court's attention in regard to rules. On May 19, 1953, Cause 7521 was thereafter filed which was also in the matter of the disbarment of Cornelius P. Coughlan. Thereafter, that Information was amended.

The Court: Well, you are still going into the history. I am not interested in what was amended. I am interested only in your defense.

Mr. Coughlan: All right, your Honor, maybe I can express it in a different way that I will bring the problem to the Court's mind. Your Honor, I have repeatedly requested of the Court prior to this time to state what rules are applicable in this proceeding. There has never been a statement from the bench as to what rules.

The Court: I am not interested in that, either. All you are required to do now is state what your defense is going to be and nothing else. You can argue the case at its [10] conclusion.

Mr. Coughlan: That is part of the defense, your Honor, that under our particular law regarding a disbarment action anything in the nature of a demur must be brought on at this time, must be brought on during this hearing. A demur may not be brought prior to that time by statutory enactment. It is prohibited. It must be brought up at the time of the hearing.

The Court: Well, you are discussing the law and I have already said several times that I am not interested in those aspects of the case. You have got to state your defense or we will proceed with the evidence.

Mr. Coughlan: Your Honor, in this particular case the government has already stated that they do not have evidence on two counts to substantiate two counts.

The Court: Well, I was wondering about the effect of that statement. I thought that all it amounted to was the original check was not available but that this was evidence of another kind sufficient to at least offer in support of the evidence.

Mr. Coughlan: Your Honor, to state it succinctly, my defense in this particular matter will be, number one, that I did not sign any checks that the government might produce as charged in the Information; Number two, that under our statute this proceeding has not been instituted and carried on in a proper manner. I would at this time, that is the sum [11] substance of my statement. I will cut it off at that. I would at this time request the Court

to state what rules we will be governed by here in the Court, in this proceeding.

The Court: Well, what are your present specific contentions? As I understand, do you contend what rules govern?

Mr. Coughlan: Your Honor, it is my contention at the time that the statute was first enacted the rules that were applicable to this type of proceeding were the rules of equity applicable in this Court, but since that time by specific Act of Congress those rules have been abrogated and I am sure that this Court is fully cognizant of the, of the abrogation that I am referring to, the institution of the Civil Rules of Federal Procedure in the District Court for the District of Alaska. I believe that the Court has been on the bench during all of the time that the new Civil Rules have been in effect in Alaska. That as a specific act of Congress those rules were by the terms of an Act of Congress made to supplant the former rules of equity and, therefore, the rules of equity that we will use in this proceeding will be those contained in the Federal Rules of Civil Procedure. And I wish to call the Court's attention to the fact that the Act of Congress making those rules——

The Court: All I want is your contention. Now, again, I have got to warn you not to argue the case, because I haven't got enough time. [12]

Mr. Coughlan: Yes; I just wanted to call that one thing to the Court's attention, that in that Act there is a specific repealing clause.

The Court: I am familiar with that. Besides the

Court is not going to pass on those things in advance. When the situation arises in this trial that calls for the application for one or the other set of rules as contended by the counsel here, why, then, I will make a ruling, but not before. All right, you may call your first witness or start putting on your evidence.

Mr. Stevens: I would like to call Mr. Coughlan, your Honor.

Mr. Coughlan: Your Honor, I refuse to take the stand at this time. The particular rules Mr. Stevens is referring to are rules for disbarment for states having commissions, what is referred to as integrated bar states, wherein a person is brought before a committee and a committee makes an examination at that time. Secondly, I will now bring to the Court's attention the rules of civil procedure, or of equitable procedure and I do not believe that under any of the rules of equitable procedure a case in equity may be proved by calling as a first witness the party against whom one is attempting to prove their case. There is a distinction in the type of disbarment actions, your Honor, between those where they allow that to be done and this type of proceeding.

The Court: Well, the objection is overruled. [13] You have to take the stand.

CORNELIUS P. COUGHLAN

the respondent, called as a witness on behalf of the petitioner, was duly sworn and testified as follows:

Mr. Coughlan: At this time, your Honor, I should like to state that I do not believe that I am required to answer questions in this matter and I do not think that I should be compelled to do so. Consequently, I will not do so during the proceeding unless the Court specifically instructs me to answer them. I wish to protect the record in that particular respect.

The Court: Go ahead.

Direct Examination

By Mr. Stevens:

Q. Would you state your name, please?

A. No; I will not state my name.

Q. On what ground do you refuse to state your name?

The Court: You will have to state your name.

Mr. Coughlan: My name is Cornelius P. Coughlan.

Q. (By Mr. Stevens): Where do you live, Mr. Coughlan?

A. Steele Hotel, Fairbanks, Alaska.

Q. Are you an attorney at law?

Mr. Coughlan: Your Honor, I am going to refuse to answer any further questions at this time.

The Court: You are ordered to answer this question. [14]

Mr. Coughlan: Yes, I am.

(Testimony of Cornelius P. Coughlan.)

Q. (By Mr. Stevens): Are you admitted to practice before this Court? A. I am.

Q. In connection with your practice as an attorney at law, were you the attorney for the estate of Raymond Silver, deceased, before the Commissioner's Court for the Fairbanks Precinct, Fourth Division?

A. I refuse to answer that question.

Q. On what ground do you refuse to answer that question?

A. I believe it is not a proper question in a disbarment action under our rules.

The Court: You are ordered to answer it.

Mr. Coughlan: I was.

Q. (By Mr. Stevens): Who hired you?

A. One Frederick Donhauser.

Q. And what was his position in regard to that estate?

A. He had no position in regard to the estate at the time he hired me.

Q. Did you obtain for him a position in regard to that estate? A. No; I did not.

Q. Did he ever attain a position in regard to that estate? A. I believe he did. [15]

Q. What was that position?

A. Administrator.

The Clerk: Petitioner's Identification No. 1.

(Bank of Fairbanks signature card was marked Petitioner's Identification No. 1.)

Q. (By Mr. Stevens): This is Petitioner's

(Testimony of Cornelius P. Coughlan.)

Identification No. 1, Mr. Coughlan. That Identification purports to be a signature card from the Bank of Fairbanks, Alaska; are you acquainted with that card? A. No; I am not.

Q. Did you sign a signature card at the Bank of Fairbanks, Alaska, prior to the time you were appointed as attorney for the estate of Raymond Silver? A. I believe I did.

Q. Is that your signature that appears thereon?

A. I don't think so.

The Clerk: Petitioner's Identification No. 2.

(Petition for Appointment of Administrator was marked Petitioner's Identification No. 2.)

Mr. Coughlan: I might state for the record that there is no "u" in the name Coughlan. It should be spelled C-o-u-g-h-l-a-n. It is not.

Q. (By Mr. Stevens): Where did you reside on April 12, 1952, if you recall? [16]

A. I believe I was residing at the Nordale Hotel upon that date.

Q. What was your occupation at that date?

A. Attorney at law.

Q. Do you ever sign checks other than with your given name? A. C. P. Coughlan.

Q. Did you have a bank account at the Bank of Fairbanks during the year between April 12, 1951, and April 12, 1952?

A. I believe I did. May I see the Identification once more? Yes, I believe I had an account there at that time. I know I had an account at the Bank of

(Testimony of Cornelius P. Coughlan.)

Fairbanks. I am not, I cannot recollect when I opened it nor when it was closed.

Q. In connection with that account, did you sign a signature card as required by the Bank of Fairbanks?

A. I believe I did. I believe I signed one C. P. Coughlan at the time I opened the account. You see, I might state there that the First National Bank, I wrote my name out, Cornelius. At the other bank I merely used the initial "C."

Q. I hand you Petitioner's Identification No. 2, which purports to be a petition filed in the matter of the estate of Raymond Silver, deceased. Are you acquainted with that exhibit?

A. I have no specific recollection of the exhibit itself.

Q. Did you represent Mr. Donhauser in attempting to [17] become administrator for the estate?

A. I did.

Q. Did you file a petition in connection with that matter for the appointment of Mr. Donhauser as the administrator for the estate?

A. As I recall, I did.

Q. Would you examine the second page of that identification, please, Mr. Coughlan? Is that Identification signed by any attorney?

A. You mean, does it purport to be signed by any attorney?

Q. That's right, does it purport to be?

A. It purports to be signed by C. P. Coughlan, attorney for the petitioner.

(Testimony of Cornelius P. Coughlan.)

Q. Is the signature of Mr. Donhauser notarized on there? A. It purports to be.

Q. Who was the notary in that case?

A. It purports to be Cornelius P. Coughlan.

Q. Is there a seal impressed upon the petition?

A. Yes, there is.

Q. And is that your seal, Cornelius P. Coughlan, Notary Public for the Territory?

A. I have a seal that bears that legend.

Q. Did you sign this document?

A. I don't recall ever signing that document with [18] that particular signature.

The Court: Is it your signature?

Mr. Coughlan: I don't believe it is, your Honor.

The Court: Why?

Mr. Coughlan: Because of the method in which the "P" is formed, the method in which the "h" is formed and the method in which the "n" is formed.

The Court: You honestly believe that is not your signature, is that correct?

Mr. Coughlan: Yes, your Honor, that is my testimony. I don't believe the other one is my signature either. The one appearing above the notary public in and for the Territory of Alaska. My Commission expires March 17, 1954. I might note that the "P" is different there, the "h" is also different even from the two signatures, considerably.

The Clerk: Petitioner's Identifications No. 3, No. 4, No. 5, No. 6, and No. 7.

(Oath of Administrator Frederick Donhauser, was marked Petitioner's Identification No. 3.)

(Testimony of Cornelius P. Coughlan.)

(Petition for leave to Sell Personal Property was marked Petitioner's Identification No. 4.)

(First and Final Account with regard to estate of Raymond Silver, deceased, was marked Petitioner's Identification No. 5.) [19]

(Check in the amount of \$117.29 was marked Petitioner's Identification No. 6.)

(Receipt signed by C. P. Coughlan was marked Petitioner's Identification No. 7.)

Q. (By Mr. Stevens): I hand you Petitioner's Identification 3 which purports to be a document filed in the same estate, the Matter of the Estate of Raymond Silver, deceased, before our Commissioner here in Fairbanks; do you recognize that document?

A. I have no independent recollection of the document.

Q. Were you the attorney for Mr. Donhauser?

A. On that particular date?

Q. In that particular case?

A. Yes; I was Mr. Donhauser's attorney prior to the time that he filed for letters of administration.

Q. Is your statement that you did not represent Mr. Donhauser after he received the letters of administration?

A. No. No. I meant I represented him after that date. From before the time that he applied for the Letters of Administration and thereafter up until the year 1952.

(Testimony of Cornelius P. Coughlan.)

Q. Does not Mr. Donhauser's, or what purports to be Mr. Donhauser's signature appear on that document, Identification No. 3?

A. There is a signature here that may be Mr. Donhauser's signature. [20]

Q. Does that signature purport to be notarized?

A. It purports to be notarized.

Q. And who was the notary in that case?

A. The notary purports to be Cornelius P. Coughlan.

Q. Is the seal impressed upon it?

A. There is a seal impressed upon it.

Q. Did you sign that document?

A. I do not believe I did. There again the "P" is formed differently than I form it. The "h" is formed differently and it is, they are formed, all of them are formed differently than they are in the others.

Q. Did you prepare an Oath of Administrator for Mr. Donhauser in connection with the estate of Raymond Silver?

A. I believe I did.

Q. Did you file the same with the Commissioner?

A. I believe I did. Not myself, personally, perhaps, but it was filed.

Q. I hand you Petitioner's Identification 4, which also purports to be an identification in connection with the same estate of Raymond Silver, a petition to sell personal property, I believe. Were you the attorney for Mr. Donhauser at the time that petition was filed?

(Testimony of Cornelius P. Coughlan.)

A. Yes; I believe I was.

Q. Did you present a petition for permission to sell personal property as listed in that petition?

A. I recall a petition for leave to sell personal property. [21]

Q. A truck?

A. I believe it was a truck located at Nome, Alaska.

Q. And that document purports to be signed by C. P. Coughlan, attorney in fact, is that not correct?

A. Yes; it purports to be signed C. P. Coughlan, attorney in fact.

Q. Did you sign that document?

A. I have no independent recollection of signing it and it does not look like my signature.

Q. Do you deny that is your signature?

A. Yes; I do. The "c's" aren't even the same in the words there.

Q. I hand you Government's Identification 5 which purports to be a final, first final accounting of the estate of Raymond Silver, deceased. Did you examine this identification, too, Mr. Coughlan?

A. I have examined it.

Q. This purports to be a petition for an order settling the account of the distribution and for the distribution of the estate between the heirs of the estate of Raymond Silver?

A. It purports to be first and final account and report of administrator and petition for order set-

(Testimony of Cornelius P. Coughlan.)

ting account for distribution, creating heirs and closing the estate.

Q. You will note that it has been signed C. P. Coughlan, attorney for administrator, and underneath appear the name, [22] C. P. Coughlan, attorney for administrator, Nordale Hotel, Fairbanks, Alaska. Did you sign that document?

A. I don't believe that I signed this document. The "p" is different than the way I make it and different from any of the others that have been shown here. The "h" is different and the two "c's" are different.

Q. Did you prepare such a petition on behalf of the administrator, Mr. Donhauser?

A. If I recall correctly there was a petition prepared but I do not believe that it was prepared at the time that this purports to have been prepared.

Q. The question is, did you prepare such a petition for Mr. Donhauser?

A. I did prepare such a petition for Mr. Donhauser, yes.

Q. But you deny you signed the document which is Identification 5? A. That is correct.

Q. I hand you Identification 6 which purports to be a check on the First National Bank of Fairbanks, yes, the First National Bank of Fairbanks made payable to one Jack Coughlan. Have you ever been known as Jack Coughlan?

A. Yes; I have been and am presently known by the nickname of Jack.

Q. Did you work for Collins and Clasby, the law

(Testimony of Cornelius P. Coughlan.)

firm of Collins and Clasby in this town at any time?

A. Yes, I have. [23]

Q. Will you examine the reverse side of that document. You will notice endorsed by Jack Coughlan and Myrtle Bowers; is that your signature that appears thereon?

A. That may be my signature.

Q. Do you deny that it is your signature?

A. No; I don't deny that this is my signature, but I can't tell for sure whether it is or not.

Q. When were you working for Collins and Clasby? A. Oh, that was in 1950.

Q. When did you leave Collins and Clasby?

A. In 1950.

Q. Were you on payroll, that is, were you paid for your services there?

A. Yes; I was on the payroll to my recollection as C. P. Coughlan.

Q. I hand you Government's Identification 7, which purports to be a receipt and on the back thereof has a note, To Whom It May Concern. Have you seen that Identification previous to this time, Mr. Coughlan?

A. If my memory serves me correctly, I have.

Q. Did you write the note on the reverse side thereof? A. I believe I did.

Q. That is your writing?

A. I believe it was. I don't recall. I recall the receipt but I do not recall specifically writing this to somebody to pick up the money. That does not mean that I [24] didn't do it, but I don't recall it.

(Testimony of Cornelius P. Coughlan.)

I did at that time, approximately that time, 11-10, have some contact with Mr. Conrad Munsen.

Q. And were you also the attorney for Mr. Teddy Manville?

A. Yes; that is true, and I do recognize the receipt. I just don't happen to recall the specific instance when that was written.

Q. Have you examined the signature on that receipt of C. P. Coughlan? A. Yes.

Q. Is that your signature?

A. It appears to be.

Q. Petitioner's Identification——

The Clerk: Petitioner's Identification 8 (1) to (5). Petitioner's Identification No. 9.

(Five (5) checks were marked Petitioner's Identification No. 8 (1) through (5).)

(Check from Lomen Commercial Co., Nome, Alaska, in the amount of \$950.00 was marked Petitioner's Identification No. 9.)

Q. (By Mr. Stevens): Mr. Coughlan, I hand you Petitioner's Identification 8, which purports to be five checks drawn on the Bank of Fairbanks. Have you seen those checks before, Mr. Coughlan?

A. I saw them in December of 1952 at a criminal trial in which I was tried and subsequently through an action of [25] the United States Court of Appeals acquitted.

Q. Mr. Coughlan, the first check was payable to a J. P. Coughlan?

A. That is correct. It purports to be.

(Testimony of Cornelius P. Coughlan.)

Q. It is signed by one C. P. Coughlan?

A. I am unable to examine the signatures here with this attached the way it is. Yes, it purports to be endorsed J. P. Coughlan.

Q. And the second check is made out to C. P. Coughlan?

A. C. P. Coughlan, yes.

Q. The second check, Mr. Coughlan, is it made out to C. P. Coughlan?

A. It purports to be made out to C. P. Coughlan.

Q. By Mr. Donhauser?

A. No, as Frederick Donhauser, administrator of the estate of Raymond Silver, deceased.

Q. And what is the endorsement on the second check of that identification?

A. Endorsement on the back of that check purports to be C. P. Coughlan, I guess, or Coughlar, "n" or "r" on the end.

Q. The third check in that series also made out to C. P. Coughlan?

A. It purports to be.

Q. And endorsed on the back thereof by C. P. Coughlan?

A. It purports to be endorsed in the letters C. P. C-o-u-c-h-l-a-g or a-h at the end. [26]

Q. C. P. Coughlan, is that the endorsement on it?

A. That is what it purports to be.

Q. And the fourth check, is it made out in a similar manner?

A. It purports to on its face to be an order to pay C. P. Coughlan and purports to be endorsed in words and letters, C. P. Coughlan.

(Testimony of Cornelius P. Coughlan.)

Q. As to those first four checks, are those your signatures?

A. No, I do not believe they are.

Q. Do you deny they are your signatures?

A. I do not recognize them as mine and they don't look similar to mine, don't look like mine.

Q. The fifth check on that identification is a check in the amount of one thousand dollars payable to C. P. Coughlan, is it not?

A. It purports to be an order to pay C. P. Coughlan, C-o-u-g-h-l-a-n.

Q. And the amount is one thousand dollars?

A. That is correct.

Q. And it is signed by Mr. Donhauser as the administrator for the estate of Raymond Silver, deceased?

A. Frederick Donhauser, administrator of the estate of Raymond Silver, deceased.

Q. And the endorsement thereon?

A. Purports to be in the letters C. P. [27] C-o-u-g-h-l-a.

Q. Is that your signature, Mr. Coughlan?

A. I do not believe it is.

Q. Do you deny that it is your signature?

A. Yes, I do.

Q. In connection with the estate of Raymond Silver, were you entrusted with the funds in the Bank of Fairbanks which belonged to that estate?

A. No, they were deposited there by Mr. Donhauser.

Q. Did you at any time receive checks which had

(Testimony of Cornelius P. Coughlan.)

been signed by Mr. Donhauser as the administrator of the estate of Raymond Silver?

A. Yes, I have.

Q. Did you receive any checks which were signed in blank, that is, they were not filled in?

A. I can recall no such checks, no.

Q. Did you have a note due at the Bank of Fairbanks on—strike that, will you. A note which was pending in the Bank of Fairbanks which you owed to the Bank of Fairbanks during the month of December, 1951?

A. I don't recall. I did have a note which was with the Bank of Fairbanks, but I don't recall the date when I had it there.

The Clerk: Petitioner's Identifications No. 10 and No. 11.

(Photostat of check in the amount of \$1,000.00 was marked Petitioner's Identification No. 10.) [28]

(Photostat of check in the amount of \$1,000.00 was marked Petitioner's Identification No. 11.)

Q. (By Mr. Stevens): This is Petitioner's Identification 9, Mr. Coughlan. It purports to be a check in the amount of nine hundred fifty dollars payable to C. P. Coughlan, attorney, from the Lomen Commercial Company, of Nome, Alaska. Is the recitation that I made correct. Is that the type of check that you have in your hand?

A. The instrument that I have in my hand is

(Testimony of Cornelius P. Coughlan.)

an order to pay to C. P. Coughlan, attorney, made by Lomen Commercial Company, Nome, Alaska, against the main office of the Seattle First National Bank, Seattle, Washington.

Q. Is any endorsement on the reverse side thereof?

A. There appears to be an endorsement on the reverse side.

Q. What does it purport to be?

A. It contains the letters C. P. C-o., and it looks like maybe a-u, may not be, g-h-l-a. That is all the other, that is all the letters that appear there. Then underneath that there is the letters a-t-t-o-r-n-e-y.

Q. Did you handle the sale of a truck to the Lomen Commercial Company of Nome, Alaska, for the estate of Raymond Silver?

A. I do not recall precisely how the truck action [29] arose in regard to the Silver estate but to the best of my recollection a letter was received by the United States Commissioner from someone at the Lomen Company stating that they would like to purchase the truck belonging to the estate that was stored on their property. The United States Commissioner called me and told me that he had such a letter and we discussed the matter. We referred at the time to the inventory where it showed that the truck was valued, I believe at a little less than or approximately the same amount; that they wanted to pay for it and because of the fact that the truck was located at Nome where there

(Testimony of Cornelius P. Coughlan.)

was not a great demand for such equipment the Commissioner informed me that he thought it might not be a bad idea to sell it.

Q. Did you present the petition which is here in Court for permission to sell the truck for the estate?

A. No. Now, you see afterwards——

The Court: Just answer the question.

Mr. Coughlan: No. The answer is no.

Q. (By Mr. Stevens): You already stated that you did prepare such a petition?

A. I prepared a petition but not at that time.

Q. Did you receive a check from the Lomen Commercial Company of Nome, Alaska, in payment for a truck which the, the sale of which was authorized by the——

A. To the best of my recollection I received a check [30] in my office from the Lomen Commercial Company which was placed in the Silver file.

Q. What was the amount of that check?

A. I don't recall but I presume that it was this check that I have here. I do not recall specifically the sum of the check. I have no independent recollection of it, but it appears to be the same, same type of check.

Q. The endorsement on the rear of that check and the reverse side of the check purports to be Cornelius or C. P. Coughlan's signature; did you sign that check?

(Testimony of Cornelius P. Coughlan.)

A. No, I do not think I signed this check.

Q. Do you know whether you signed the check or not?

A. Well, yes, I know as well as I might know. The signature doesn't look like mine. It is not the way I sign my name.

Q. Do you deny you signed that check?

A. I do.

Q. I hand you Petitioner's Identification 10, which purports to be a photostat of microfilm of a check in the amount of one thousand dollars drawn on the account of Raymond Silver payable to C. P. Coughlan and endorsed on the reverse side by C. P. Coughlan. You have seen that photostat before, have you not?

A. I don't recall having seen this specific photostat before. However, I have seen the very similar one. Having examined it further on the inside I presume now that I have [31] seen this specific photostat before.

Q. You were present in Court at the time when microfilm from the Bank of Fairbanks was displayed to the Court previously?

A. I have no recollection of it, of the, no independent recollection of the checks or purported checks that might have been shown there if that is what you are referring to.

Q. Do you recall the actual showing of the microfilm before the court?

A. I recall they had a machine in here. I didn't watch it, no.

(Testimony of Cornelius P. Coughlan.)

Q. Were you the attorney for the estate of Raymond Silver on the date that that check bears, 1-2-52, I believe it is?

A. I can't tell what the date is either on this but if the, I believe that I was the attorney for the estate on 1-2-52.

Q. I hand you Petitioner's Identification 11, which purports to be another check in the amount of one thousand dollars payable to C. P. Coughlan drawn on the account of Raymond Silver, deceased in the Bank of Fairbanks, signed by Frederick Donhauser as the administrator and endorsed by C. P. Coughlan. Have you seen that identification before?

A. I believe I have seen this identification before although I have no specific independent recollection of it. It appears to be one that I have seen [32] before.

Q. Were you the attorney for Raymond Silver estate in March of 1952?

A. Yes, I believe I was.

Q. Do you know where the original of Identifications 10 or 11, which you have just examined, can be located?

A. No, I do not.

Q. Have you ever seen the originals of those checks?

A. Not to my recollection.

Q. Did you endorse Identifications 10 and 11?

A. I can't hardly make this one that I have in my hand, No. 11, out. It does not appear from what I can see of it, which is very, very little, to be my signature, the way the "C" and the "p" are cited.

(Testimony of Cornelius P. Coughlan.)

Q. Did you have an account in the First National Bank at the same time that you had a bank account in the Bank of Fairbanks?

A. Yes, I believe that I had more than one account in the First National Bank. I don't have specific recollection of it.

Q. Did you deposit this check in the amount of one thousand dollars in the First National Bank of Fairbanks to your account?

A. No, I have no recollection whatsoever of depositing that check to my account.

Q. Did you formerly have a notary public commission in the Territory of Alaska, Mr. Coughlan?

A. Yes, I have. [33]

Q. Did you have one in May of 1951?

A. Yes, I believe I did. I did in fact.

Q. Do you recall what date your commission expired on your former commission?

A. Off-hand I do not.

Q. Did you lose your notarial seal at any time?

A. I don't believe I did. I may have.

Q. In connection with the estate of Raymond Silver, deceased, did you have the amount of three thousand nine hundred fifty dollars coming to you for attorney's fees?

A. I have no recollection of what I would have had coming as attorney's fees in that estate.

Q. You have admitted, Mr. Coughlan, that the signature C. P. Coughlan's appearing on Petitioner's Identification 7, which is on the reverse

(Testimony of Cornelius P. Coughlan.)

side of a receipt issued by Sgt. DeSpair for bail in the amount of one hundred dollars on the case of Teddy Manville is in your handwriting; is that correct?

A. I do not specifically recall writing that particular receipt, but it does appear to be in my handwriting and I recall having had some contact with the person mentioned there in at approximately that time, and as I said before also I was connected with that case.

Q. You stated that you did prepare a first and final accounting and report for the administrator but that you are not certain that the document before the Court, Petitioner's [34] Identification 5 is the same petition, is that correct?

A. That is correct. That is correct to the best of my recollection.

Q. In connection with the preparation of the petition which you did prepare you stated that the truck was, the truck in the estate was valued at slightly less than the sale value to the Lomen Commercial Company?

A. To the best of my recollection the value or the offer that the Lomen Commercial Company tentatively made in the letter to the Commissioner seemed like a fair one and particularly under the circumstances of the truck being located in Nome, seemed very desirable to accept that and that was the Commissioner's thought on it before I had ever even seen it and I personally agreed with it.

Q. Were you paid for the truck prior to the

(Testimony of Cornelius P. Coughlan.)

time you filed the petition for permission to sell the truck?

A. No, I do not believe so. If you wish me to clarify that I will.

Q. If you wish to clarify it, what is the clarification?

A. To the best of my recollection the letter, first letter was received by the Commissioner. The Commissioner and I had a talk and we considered it desirable to accept the tentative offer made by the Lomen Commercial Company and I wrote a letter to them, if I am not mistaken, and they in turn made their offer a secure one and I informed them I believe either in the first letter or in a second letter that we would [35] have to go through certain Court procedure and after they received the paper they could send the check.

Q. Mr. Coughlan, Petitioner's Identification 9, which is a check from Lomen Commercial Company, is dated 30 September, 1951. It is perforated 10-8-51. The petition to sell personal property filed by Cornelius Coughlan, attorney in fact in the case of, in the Matter of the Estate of Raymond Silver, deceased, is dated at Fairbanks, Alaska, on the 30th day of October, 1951, and the petition for the first and final account which was filed in the same case on January 12, 1952, the truck is listed as being appraised in the value of five hundred dollars. Now, assuming you prepared the petition could you explain the difference?

A. The only way that I might be able to explain

(Testimony of Cornelius P. Coughlan.)

that from my recollection is that the inventory carried the truck as five hundred and the inventory was used in the preparation of the final account.

Q. Would you have done that even if you had received payment for the truck in the amount of nine hundred fifty dollars, despite the valuation of five hundred dollars, Mr. Coughlan?

A. I don't understand your question correctly. Would you repeat it?

Q. The valuation listed in the petition for final account, the three-quarter ton pick-up is five hundred dollars. The Lomen Commercial Company issued a check in the amount of [36] nine hundred fifty dollars on the 30th of September in payment for the truck and a petition to sell the truck located at Nome, a GMC pick-up truck in the amount of, in which it states that the petitioner has been offered the sum of nine hundred fifty dollars for the truck was filed November 1, dated the 30th day of October. Can you explain, assuming you did file the petition for the final accounting, why the appraisal value was used rather than the actual cash value?

A. Taking into consideration what you have, the entire scope of your question, until the truck was sold the appraised value of the truck was undoubtedly what would be carried on it, on the inventory.

The inventory would never change in that respect and the difference would be noted in the order for particular article. Now, I do not have any specific sale wherein the specific price was stated for that

(Testimony of Cornelius P. Coughlan.)

recollection in respect to the final accounting so I cannot state why it was carried one way or the other, whether the sale had been actually consummated at that time or had not been actually consummated at that time. It would appear from what you have stated that the Lomen Commercial Company possibly had a check that they were holding as of a particular date and referring to the past trial, that was had, where a man came down and testified from the Lomen Commercial Company, I believe I am not mistaken in the fact that he was leaving here and wanted the truck purchased and he was the only person there who had the authorization to make a purchase of that size. Now, I [37] would not say that that was true, but to my recollection that was what was true, so when they started their correspondence in respect to the truck the man who had the authority to purchase a truck and spend that sum of money wrote the check and then he was going outside and putting in the entire winter in Seattle and that to me, as I recall it now, may have been why the check is dated at one particular time. Obviously the check is dated prior to the petition for order to sell.

Q. It is also perforated, having been cashed before the petition to sell?

A. That may be. That may well be.

Q. The petition for final accounting shows that the value of the truck is five hundred dollars. Did you cash the Lomen Commercial Company check?

A. No, I did not.

(Testimony of Cornelius P. Coughlan.)

The Court: Who got the cash for it?

Mr. Coughlan: I wouldn't know, your Honor.

The Court: Well, you were familiar with the probate file, weren't you?

Mr. Coughlan: Yes, your Honor, I was familiar with it to this extent.

The Court: Well, I am just asking you if you were familiar with the attorney for the administrator and you were such?

Mr. Coughlan: And I do recall actually receiving a check from the Lomen Commercial Company. I recall that [38] extremely well, and that was placed in the file. In other words, when it was received it was placed in the file. There is a file cabinet and it contained some probate files.

The Court: And you never missed it?

Mr. Coughlan: No, sir, I never missed it until it was called to my attention.

The Court: Was that taken into consideration in the final account?

Mr. Coughlan: The final account, if I am not mistaken, your Honor, was typed by the girl in the office.

The Court: I am just asking you if that was taken into consideration in the final account?

Mr. Coughlan: I do not believe so, your Honor. I believe that the final account was typed. I may be wrong on this but I believe that the final account was typed somewhere in September or the first part of October. I think it was typed just about that same time.

(Testimony of Cornelius P. Coughlan.)

The Court: You mean there is some significance to typing or are you merely referring to a time?

Mr. Coughlan: I am referring to time.

The Court: There is no use talking about typing. You have testified here that all of these exhibits consisting of documents filed in the Probate Court were not prepared by you or not signed by you. And yet you say you are familiar with the file. Well, who did file them?

Mr. Coughlan: I have, I say, your Honor, that I [39] have no independent recollection of going up and filing the papers myself or whether Mr. Donhauser filed them or whether the girl from the office filed them.

The Court: That isn't the question. The question that you were asked repeatedly, whether it was your signature on each one of these documents?

Mr. Coughlan: And my statement was no.

The Court: And somebody else must have signed them?

Mr. Coughlan: That is my contention.

The Court: And somebody else filed them?

Mr. Coughlan: No.

The Court: Did you recognize the typing?

Mr. Coughlan: No, your Honor.

The Court: Who did your stenographic work?

Mr. Coughlan: The girl that worked in the office.

The Court: Do you recognize her work?

Mr. Coughlan: It was an electric machine.

The Court: Do you recognize her work?

Mr. Coughlan: No, I do not.

(Testimony of Cornelius P. Coughlan.)

The Court: But you have been rummaging through the file; presumably you finally closed the estate, didn't you?

Mr. Coughlan: No, your Honor, I did not.

The Court: You mean you never went through the file?

Mr. Coughlan: No, Your Honor, I did not.

The Court: What did you do?

Mr. Coughlan: Your Honor, this estate entailed [40] several heirs——

The Court: Well, I don't want you now to ramble along on something else. I am asking you whether somebody else could have filed all these documents and you was attorney and presumably examining the file at times and never become aware of it until you saw the documents here in Court?

Mr. Coughlan: No, your Honor, I did not. Mr. Donhauser also studied these documents in between times also.

The Court: Is this the first time you have seen these documents, Exhibits 1 to 7? Is this the first time you have seen them?

Mr. Coughlan: No, your Honor, I saw many of these identifications that have been offered here at the time of Cause No. 1651 Criminal that was tried here.

The Court: That was the first time you saw them?

Mr. Coughlan: To the best of my recollection, yes. I could not have seen them before that or I would have remembered them.

(Testimony of Cornelius P. Coughlan.)

The Court: So, therefore, your testimony here now is that all of them are forgeries?

Mr. Coughlan: Yes, your Honor, that is correct.

The Court: That is all I want to know.

Q. (By Mr. Stevens): Are you aware, Mr. Coughlan, that pursuant to the stipulation entered into between you and me there were certain documents sent to Washington as known handwriting standards? [41]

A. No, I do not know of any particular situation of that type. I do recall a stipulation wherein because of a defect in a notice to me in respect to matters——

Q. Mr. Coughlan, maybe you misunderstood me. It was not that you stipulated that these were known handwriting standards but you were aware that known handwriting standards were sent to Washington, were you not?

A. I was acquainted that you had sent some papers to Washington, D. C., yes.

Q. And the first one of those was Government's Identification 1, which purports to be a signature card of C. P. Coughlan on the account of C. P. Coughlan who was then a resident of the Nordale Hotel and attorney at law?

A. I believe that was one of the identifications.

Q. You now deny this is not your signature, is that correct?

A. That is correct. Fact of the matter is, I have never admitted that it was.

(Testimony of Cornelius P. Coughlan.)

The Court: That is a forgery also then, is it?

Mr. Coughlan: It is my contention that it is, your Honor.

The Court: Well, when did you first do anything about these forgeries?

Mr. Coughlan: Your Honor, one of the first times I did anything about these forgeries when they were referred to me was take them to the United States Attorney's office. [42] I believe that under the circumstances I was placed on the stand that I will be able to place Mr. Stevens on the stand at a latter date.

The Court: You didn't answer my question. When did you first do anything about these forgeries?

Mr. Coughlan: I don't recall the date, but I took them over and placed them——

The Court: What was the occasion on which you did anything and what was it that you did?

Mr. Coughlan: The occasion was approximately the 4th day of July, 1952, when someone told me on the street that the United States Marshal was going down to my office and attach everything in it. I went down there. I took some certain checks out of there and put them in Warren Taylor's safe. The checks that I took were ones that had been referred to me by the First National Bank.

The Court: I am not discussing, I am not asking you now what was done with certain checks or anything of that kind. I am asking you when is the

(Testimony of Cornelius P. Coughlan.)

first time that you did anything about these so-called forgeries?

Mr. Coughlan: I never knew that these were the things that they were charging me with until the time of the trial, your Honor.

The Court: The criminal trial?

Mr. Coughlan: The criminal trial.

The Court: What did you do then when you found out [43] they were forgeries?

Mr. Coughlan: I went on with the trial.

The Court: That is all.

Q. (By Mr. Stevens): In connection with the petition for the appointment of administrator for Raymond Silver, deceased, you have admitted that you did prepare a petition for Mr. Donhauser's, for such appointment?

A. Yes, as I recall I did.

Q. And as you recall it, did you according to law have the petitioner for the position of administrator swear that the facts stated in the petition were true. Did you notarize his signature?

A. I may not have. It may have been done by the secretary there in the office. I do not recall specifically taking his oath.

Q. Did your secretary use your seal and affix your signature as a notary at any time to your knowledge?

A. Not with my knowledge or I would have done something about it.

Q. You now deny though that the signature

(Testimony of Cornelius P. Coughlan.)

which appears on the petition for the appointment of the administrator is not your signature?

A. Yes, that is correct. I deny it.

Q. The oath of the administrator for Frederick Donhauser, did you prepare an oath for Mr. Donhauser in [44] connection with the matter of Raymond Silver, deceased?

A. I believe it was done in my office, yes.

Q. Did you notarize Mr. Donhauser's signature?

A. I have no recollection of notarizing his signature.

Q. If an oath was prepared in your office, would it have been notarized, Mr. Coughlan? Do you have another notary in your office?

A. Oh, yes, the girl was a notary.

Q. And did she use her own seal when she prepared oaths? A. Normally, yes.

Q. To your knowledge, did she use the seal of Cornelius P. Coughlan as a Notary Public?

A. It never came to my knowledge that she ever used mine.

Q. You now deny that you did not sign the Notary Public signature which appears on the oath of the administrator of the estate of Raymond Silver, which is Identification 3?

A. That is the one I looked at here. I deny that I signed it.

Q. And the petition to sell the personal property, the truck at Nome. You admit that you prepared a petition for that purpose, is that correct?

A. I prepared a petition, yes?

(Testimony of Cornelius P. Coughlan.)

Q. But you deny that the petition—did you sign the petition that you prepared?

A. I don't recall signing it, no. If I recall correctly the administrator signed it. [45]

Q. Do you deny that the petition which is before the Court here on the estate of Raymond Silver, signed by C. P. Coughlan, attorney in fact, is in fact your signature?

A. I deny that it is my signature.

Q. Identification 5, which is the first and final account report of the administrator, you have previously denied that your signature appears thereon as C. P. Coughlan, attorney for the administrator. Is that right?

A. If that is the one that you showed me here I deny that I signed it.

Q. However, you admit that the Identification 6, the check made payable to Jack Coughlan on the account of Collins and Clasby, the office account of Collins and Clasby, is your signature on the reverse side thereof?

A. I do not admit it is mine. I say it looks like my signature but I do not recall them making a check payable to Jack Coughlan. I believe that I was on the payroll as C. P. Coughlan.

Q. Identification 7, the receipt issued to C. P. Coughlan by Sergeant DeSpain in the amount of one hundred dollars which has the note on the reverse side thereof, did you admit that you signed this document?

(Testimony of Cornelius P. Coughlan.)

A. I don't recall signing it, although that does look like my signature.

Q. Do you deny it looks like your signature?

A. I recall being associated with that particular case [46] and I recall being in contact with Mr. Munsen whose name appears thereon at about that time.

Q. Do you admit that this is your signature?

A. I think it is.

Q. We can treat this then as a known handwriting standard, Identification 7, is that correct?

A. I think so even though I don't recall specifically signing it.

Mr. Stevens: Would the Court care for a recess at this time?

The Court: We will go until five o'clock.

Mr. Stevens: Very well, your Honor. Does the Court have any further questions of Mr. Coughlan at this time? We would like to call Mrs. Nordale.

Mr. Coughlan: Do I have an opportunity to cross-examine on this, give a cross-examination, your Honor?

The Court: What do you want to do, cross-examine yourself?

Mr. Coughlan: Yes, your Honor.

The Court: I think that is one of the handicaps that a person is under who represents himself. I don't know how we are going to conduct a cross-examination.

Mr. Stevens: For the purpose of the record, your Honor, do you have any statement qualifying

(Testimony of Cornelius P. Coughlan.)

any of the answers you have given here, Mr. Coughlan?

Mr. Coughlan: Yes, I do. [47]

Mr. Stevens: Would the Court permit us to request what it is.

The Court: Well, the Court hasn't got time to permit anybody just to ramble on and that is what would happen. If you feel there is something that has been omitted here that should be presented to the Court you may ask yourself the question so that counsel may have an opportunity to object to it.

Mr. Coughlan: Thank you, your Honor.

The Court: You want to explain. It seems to me that you have gone at great length to make explanations, but if you have left out something and want to explain it now and will be brief about it, you may proceed by way of narrative explanations, but otherwise the Court will have to—you have shown your disposition—not to make it unduly long or ramble. I will have to confine you by means of questions.

Mr. Coughlan: I call the Court's attention, and for the record to Petitioner's Identification 5, which purports to be a first and final account of report of administrator and petition for order settling for distribution, decreeing heirs and closing the estate. Now, this is stamped, filed January 12, 1952, before Clinton B. Stewart as United States Commissioner. I would like to call the Court's attention and the attention of the record to the fact that as I recall Mr. Donhauser wasn't even in town here at that

(Testimony of Cornelius P. Coughlan.)

time, that he had left town and wasn't here. And I believe that that is of some [48] importance in this matter. In respect to the petition for leave to sell personal property, I should like to state that Lomen and Company was well aware that this matter was in probate. They did not know who the administrator was at the time, but did know that it was, the estate was being administered through the Fairbanks Precinct. They then wrote through one of their officers to the Commissioner here requesting information concerning the purchase of that truck; that the Commissioner, instead of writing them back had me write to them which I did do explaining to them what the situation was as far as the estate was concerned; that there was no objection to a sale and that the tentative price looked good. The Commissioner in the meantime acknowledged their letter, wrote to them and acknowledged their letter telling them that they had received it and in the future to communicate through me with Mr. Donhauser. And they were well aware of that fact and that whenever that particular check was sent down here to the best of my recollection it was sent after the order for sale had been received by them, whether it was prior to this time shown here or not. I have no recollection concerning that but I, to the best of my recollection they received the order when they, then they sent this check. After they had received the order of sale they sent the check and there were some papers signed for the transfer of the truck, for the procuration of license plates,

(Testimony of Cornelius P. Coughlan.)

to utilize it on the road. And that is my recollection of this particular check. I do recall very [49] definitely seeing it come into my office, but it was after an order for sale had been signed. I should like the court to examine the appraiser's report in this matter. Do you have that here?

The Court: Now, before you get on that, I want to ask you some questions about this check, Petitioner's Identification, Petitioner's Exhibit for Identification No. 8. Now, you don't remember getting this check?

Mr. Coughlan: May I see it, your Honor?

The Court. You just looked at it?

Mr. Coughlan: Oh, well, I don't recall the number. Yes, I very definitely recall receiving that check in the office.

The Court: But do you contend that somebody forged the endorsement?

Mr. Coughlan: Yes, your Honor, since I did not sign it.

The Court: And obtained the money?

Mr. Coughlan: I don't know whether they obtained money or not, but I did not obtain the money on that check.

The Court: You didn't obtain the money on this check?

Mr. Coughlan: No, I did not.

The Court: Did you miss having this money?

Mr. Coughlan: No, your Honor, I didn't. I will ask the Clerk to mark this for identification. [50]

The Clerk: Respondent's Identification A.

(Testimony of Cornelius P. Coughlan.)

(Inventory of Silver estate was marked Respondent's Identification A.)

The Court: Incidentally, I want to ask another question about these checks. Whenever you receive checks of this kind in the course of your business as an attorney, what do you do with them? What is the first thing you do; do you enter them in a book?

Mr. Coughlan: In this particular case, I did, your Honor, by, entered it on a little note pad and placed it in the Silver file.

The Court: Did you enter it on any book in addition to that?

Mr. Coughlan: No, your Honor.

The Court: Then it was in your Silver estate file?

Mr. Coughlan: Yes, your Honor.

The Court: And so you must have run across that note sometime to the effect that you received that check, did you not?

Mr. Coughlan: Yes, I have a definite recollection of receiving that check and placing it in that file, your Honor.

The Court: Then what do you do with checks that come in like this?

Mr. Coughlan: That type of check I placed them in the file waiting for the administrator to come and do what, put it in the bank that he wishes it placed in. [51]

(Testimony of Cornelius P. Coughlan.)

The Court: Then your testimony is that you never missed the loss of this check?

Mr. Coughlan: No, sir, I did not, your Honor. I had no occasion to look for it.

The Court: And no one else missed it either?

Mr. Coughlan: No, your Honor, to my knowledge no one else did. No one else called it to my attention.

The Court: Somebody just made a clean get-away with the money from this check and nobody followed it up, is that so far as you know?

Mr. Coughlan: To my knowledge the first that I knew of it was at the time after the trial had started in 1651 Criminal, the first I knew of it.

Referring to the inventory in the matter of the estate of Silver, deceased, Frederick Donhauser, administrator, I will state that an inventory was filed in that particular estate as required by law within the time.

The Court: What point now are you directing my attention to?

Mr. Coughlan: Would the Court examine this?

The Court: I don't need to examine it. I am wondering though how this statement that you are making can have any bearing on the direct examination. You had better disclose that first so that we will see.

Mr. Coughlan: The United States Attorney was referring to time elements involved and apparent discrepancies. [52] I was pointing out a discrepancy here where the Court will note that in the order

(Testimony of Cornelius P. Coughlan.)

for sale which I do not believe is here, I will identify at this time. Do you have the order for sale here?

The Court: Well, you had better specify what the discrepancy is in.

Mr. Coughlan: The discrepancy is in the year it was filed, your Honor. It shows that it was filed in 1952.

The Court: You mean the inventory?

Mr. Coughlan: The inventory, your Honor.

The Court: Did the United States Attorney make any point of that?

Mr. Coughlan: He made a point only of the discrepancies, your Honor, and I was just merely giving statements concerning discrepancies in the rest of it.

The Court: Well, we can go through the files of this Court and probably give up a thousand discrepancies but that doesn't make it material evidence here so you will have to confine your statements to something else.

Mr. Coughlan: Your Honor, this is a pertinent fact that I am trying to get over in regard to this.

The Court: In regard to what?

Mr. Coughlan: In regard to this inventory that a previous order of the Court mentions that the inventory had been filed prior to that time.

The Court: What testimony already given by you [53] would that have a bearing on. Just what testimony would it be?

Mr. Coughlan: On the discrepancy in dates, your

(Testimony of Cornelius P. Coughlan.)

Honor, in respect to how they were filed and where. The estate, he has been questioning me concerning the state of the files in Probate Court.

The Court: I don't recall any such testimony. It seems to me that the only testimony so far as discrepancies was concerned was to some specific fact and now you are apparently intending to make a statement concerning discrepancies generally. The Court doesn't have time for that. If he made any, if he adduced any testimony from you as to a discrepancy concerning a particular thing, of course, you would have a right to explain that, but not by showing discrepancies generally, so you will have to go to something else unless you are through.

Mr. Coughlan: That is all, your Honor.

The Clerk: Petitioner's Identification 12 and Petitioner's Identification 13.

(Approval of Sale, dated November 1, 1951, was marked Petitioner's Identification No. 12.)

(Order for Sale was marked Petitioner's Identification No. 13.)

Q. (By Mr. Stevens): I hand you Petitioner's Identification 12, which purports to be an approval of sale, and petitioner's Identification No. 13 which purports to be an order for sale. They [54] are both dated the first day of November, 1951, is that correct?

A. Yes, they purport to be as you say and bear the dates that you say.

Q. Are those the documents which were pre-

(Testimony of Cornelius P. Coughlan.)

pared, or were those documents prepared by your office in connection with the estate of Raymond Silver, deceased?

A. I believe they were or they certainly were documents of the same type that were prepared.

Q. Do you remember preparing three documents, a petition for approval of sale, approval of the petition, and the order and filing them with the Commissioner?

A. I beg your pardon, sir.

Q. Do you remember preparing the three documents relating to that truck?

A. I have no specific recollection of them, concerning them.

Q. Mr. Coughlan——

The Clerk: Petitioner's Identification No. 14.

(Letter dated September 9, 1951, was marked Petitioner's Identification No. 14.)

Q. (By Mr. Stevens): This is Petitioner's Identification 14, a letter dated September 19, 1951, and addressed to the estate of——

A. Estate of Raymond Silver, care of United States Commissioner, Fairbanks, Alaska, attention, Mr. Donhauser. [55]

Q. Do you recall receiving that letter from the Commissioner?

A. I do not recall taking this letter into my possession. I very definitely recall receiving this letter,

(Testimony of Cornelius P. Coughlan.)

that the United States Commissioner referred me to it.

Q. Did you keep files in your office of the estate that you handled? A. Yes, I did.

Q. And copies of all the documents you prepared in connection with the estate?

A. I believe so, yes, attempted to do so.

Q. And you kept copies of the letters you wrote in connection with the estate? A. I believe so.

(Copy of letter from C. P. Coughlan was marked Petitioner's Identification No. 15.)

Q. (By Mr. Stevens): I hand you Identification 15 which purports to be a copy of a letter from C. P. Coughlan, attorney at law, and also Identification 16, both of which letters I removed from this file which is in possession of the government which purports to be the file of C. P. Coughlan of the estate of Raymond Silver.

(Letter from Lomen Company, Nome, Alaska, was marked Petitioner's Identification [56] No. 16.)

Mr. Coughlan: I have examined Petitioner's Identification 15 and I do not specifically recall writing that particular letter, but there was a letter of that nature written very definitely.

(Copy of letter to Lomen Commercial Company, Nome, Alaska, was marked Petitioner's Identification No. 17.)

(Testimony of Cornelius P. Coughlan.)

Q. (By Mr. Stevens): I hand you Petitioner's Identifications 16 and 17, two similar letters, one from the Lomen Commercial Company.

A. I have not examined that.

Q. You have not examined that? Would you examine that first then. Would you examine that and keep the record straight. That is Petitioner's Identification 14.

A. I have examined Petitioner's Identification 14.

Q. Petitioner's Identifications 16 and 17 are two more letters from the file of C. P. Coughlan, attorney for the estate of Raymond Silver, both of them concerning the same truck. Did you receive the letter from the Lomen Commercial Company which is Identification 16?

A. I believe that that is the letter that I previously referred to, yes.

Q. And that letter states that enclosed therewith was a check in the amount of nine hundred fifty dollars?

A. So enclosed our check on the Seattle First National Bank in the amount of nine hundred fifty dollars in full payment of same. [57]

Q. And Petitioner's Identification 17, Mr. Coughlan, is a copy of an acknowledgement letter purportedly written by C. P. Coughlan; did you write that letter?

A. I don't specifically recall writing Identification, Petitioner's Identification 17, but I must have

(Testimony of Cornelius P. Coughlan.)

written a letter very similar to it. In all probability that same letter.

Q. And that letter acknowledges receipt of the letter enclosing the check, does it not?

A. I believe it does. Yes, apparently so. It would appear that it refers to the same letter that appears in Petitioner's Identification 6.

Q. In order then to clear the record at this time, Mr. Coughlan, you admit the signature on Government's Identification 7?

A. May I see Government's Identification 7?

Q. That is the receipt which was signed on the back of the bail slip?

A. Yes, I believe that that is my signature, although I do not specifically recall having written it. It looks like my signature and I was associated with that particular paper.

Q. But you deny that all other signatures presented to you on Government's Identifications 1 through 6 are your signatures?

A. All of the signatures that I denied making myself I still deny making.

Mr. Stevens: We have nothing further, Mr. Coughlan. [58]

The Court: Do you wish to add anything further to what you have said in response to these last questions on redirect examination.

Mr. Coughlan: Yes, your Honor, referring to the last Identifications that just went in, may I examine them?

The Court: 16 and 17.

(Testimony of Cornelius P. Coughlan.)

Mr. Coughlan: No, I mean the last ones referring to the probate file. They would be the order and the petition for order.

The Court: Well, what—were you examined concerning those on redirect?

Mr. Coughlan: Yes, I was, your Honor. He has been examining me concerning them.

The Court: You mean this order?

Mr. Coughlan: Yes, your Honor, and there is a petition for the order, I believe. Yes, the approval of the sale.

Mr. Stevens: Did you have any other matter to state, Mr. Coughlan?

Mr. Coughlan: Yes, I do. I am going to attempt to state it here. Now, I should like to state that at the time that the petition for order to sell, the order to sell and the approval for sale were made there was an inventory on file upon which these, upon which the petition for order to sell, the order and the approval of the sale were based; that the United States Commissioner at that time had as required by law the inventory of the estate; that he examined the [59] inventory of the estate and determined that the value that the appraisers had placed upon the three-quarter ton GMC pick-up truck; ascertained that it was five hundred dollars as of Fairbanks prices and decided that nine hundred fifty dollars was a good price for it. One might note that that was filed on November 1, 1951—November 1, 1951, and this inventory shows on the May 7, 1952.

The Court: You have nothing further?

(Testimony of Cornelius P. Coughlan.)

Mr. Coughlan: I do not believe so, your Honor.

The Court: Well, we will recess at this time. We will perhaps adjourn. What is the opinion of counsel as to how long this case will last?

Mr. Stevens: The government called Mr. Coughlan first so that we might ascertain how many of these documents we must establish by independent testimony and it is now our opinion, your Honor, that it will take two days to present the government's case?

The Court: What is your opinion?

Mr. Coughlan: As to the defense? I believe two days, your Honor.

The Court: Are you speaking now of the entire case or as to the defense only?

Mr. Coughlan: I thought I was speaking in the same manner that the United States Attorney was. Two days for my side and two days for his. Isn't that what you meant, two days for your case? [60]

Mr. Stevens: Yes. I meant that our side would take two days to put on, the government's witnesses, your Honor.

The Court: Of course, what I was interested in particularly is how long it would take all together. I am assuming then it will take four days.

Mr. Stevens: If Mr. Coughlan's statement is it will take two for his.

The Court: We will recess for five minutes and go on until about 5:30.

(Thereupon, at 5:10 p. m., the court took a

recess until 5:15 p.m., at which time it reconvened and the trial of this cause was resumed.)

The Clerk: Court is reconvened.

Mr. Stevens: Mrs. Nordale, please.

LaDESSA NORDALE

a witness called in behalf of the petitioner, was duly sworn and testified as follows:

Direct Examination

By Mr. Stevens:

Q. Would you state your name to the Court, please.

A. LaDessa Nordale.

Q. Where do you reside, Mrs. Nordale?

A. Fairbanks, Alaska.

Q. And what is your position here at Fairbanks?

A. United States Commissioner, Fourth Division, Fairbanks Precinct. [61]

Q. When did you become the Commissioner for this precinct? A. June 1st, 1952.

Q. Are you aware of who was your predecessor in office? A. Yes.

Q. Who was your predecessor?

A. Mrs. Boring.

Q. Do you know of your own knowledge who preceded that lady? A. Yes.

Q. Who was that? A. Clinton Stewart.

Q. Now, Mrs. Nordale, this is Government's Identification 2, which purports to be a document from the estate of Raymond Silver, estate No. 1418

(Testimony of LaDessa Nordale.)

in the Commissioner's Court. Could you tell the Court whether or not that is a record of your Court?

A. It is.

Q. And is that a document from the estate of Raymond Silver? A. Yes.

Mr. Coughlan: Your Honor, at this time I am going to object to any further questions propounded by the United States Attorney under the information before this Court for the reason that the same is an amended information in Cause No. 7521 civil. We are here under the rules of equity. The [62] original action was filed here in this Court as——

The Court: Well, I don't care about the date. You made your point I assume. The objection is overruled. Proceed.

Q. (By Mr. Stevens): I hand you Petitioner's Identification No. 3, which purports to be another document from the estate 1416 in this Precinct. Could you tell us, is that an official record of your Court? A. It is.

Q. And on both Identifications 2 and 3, does there appear the stamp of the United States Commissioner? A. It does.

Q. In this Precinct? A. Yes.

Q. Here is Plaintiff's, or Petitioner's Identification 4 which purports to be another document from the same estate, that is a part of the official record of your Court? A. It is.

Q. And does it bear the official stamp thereon?

A. It does.

Q. And the last is Identification 5.

(Testimony of LaDessa Nordale.)

The Court: I am wondering why the parties can't stipulate that these are records of the Commissioner's Court. No reason, it seems to me. There is no dispute over them.

Mr. Coughlan: Your Honor, in the first place, they have not been in her continuous, to my [63] knowledge they have not been continually in the records of the Commissioner's Court. They have been removed for a long period of time from there.

The Court: Well, you are just not willing to stipulate then, as I understand it.

Mr. Coughlan: Well, I would be willing to stipulate with that particular point reserved. I am willing to stipulate with that particular point reserved.

Mr. Stevens: I believe the matter is almost covered now, your Honor.

The Court: Well, all files leave the custodian at times, so there wouldn't be anything unusual.

Mr. Coughlan: Yes, I am willing at this time, if the Court please, and if Mr. Stevens, to stipulate that these Identifications were originally taken from the Probate Court.

The Court: Well, that isn't the kind of stipulation that we want. All we want is a stipulation that these are the records of the Probate Court.

Mr. Coughlan: Yes, and considered the records of the Probate Court.

The Court: If you can't stipulate that they are the records why we might as well have the Commissioner testify.

(Testimony of LaDessa Nordale.)

Q. (By Mr. Stevens): Are you personally familiar with Identification 5, Mrs. Nordale?

A. No, I am not.

The Clerk: Petitioner's Identification [64]
No. 18.

(Order of Court to release Probate papers
was marked Petitioner's Identification No. 18.)

Q. (By Mr. Stevens): Could you tell us how these documents left your file?

A. On an order of the District Court.

The Clerk: Petitioner's Identification 19.

(Order Settling Final Account was marked
Petitioner's Identification No. 19.)

Q. (By Mr. Stevens): I hand you Identification 18. Would you state to the Court, is that a copy of the order which permitted you to release these records? A. It is.

Q. Now, in connection with this estate, Mrs. Nordale, did you discuss the closing of the estate with Mr. Coughlan? A. Yes.

Q. I hand you Petitioner's Identification 19, which purports to be an order for the settling of the estate. Is that stamped as having been filed with your Court? A. Yes.

Q. And was it filed with you personally?

A. Yes.

Q. Did you discuss that purported order with Mr. Coughlan? A. I did. [65]

Q. Did you sign the order closing the estate?

(Testimony of LaDessa Nordale.)

A. I did not.

Q. And was that order based upon or purportedly based upon the petition for closing which has already been filed in this case, or you identified?

A. Yes.

Q. Could you tell the Court why you did not approve it?

A. Because there were no supporting papers to check the final accounts such as cancelled checks, etc.

Q. And at that time did you refuse to settle it, permit Mr. Coughlan to settle the estate?

A. I explained to Mr. Coughlan at that time that I could not sign the paper that day until the final account had been checked.

Q. Did Mr. Coughlan present the final accounting papers to you?

A. Yes, Mr. Coughlan brought this paper in himself in the afternoon.

Mr. Stevens: Your witness, Mr. Coughlan.

Cross-Examination

By Mr. Coughlan:

Q. Mrs. Nordale, recalling the time that the order for the closing of the estate was brought to you, do you have a clear recollection of that particular day?

A. I remember, Mr. Coughlan, it was either a Thursday or a Friday as I recall. It was toward the end of the week. [66]

(Testimony of LaDessa Nordale.)

Q. Do you recall that I talked to you prior to the time that I brought in this order?

A. No, I don't, Mr. Coughlan.

Q. Do you recall whether or not I checked out the Silver estate file for Mrs. McNealy to type that order?

A. I can't answer that for sure. However, we have a book in which your name would be entered and the date if the estate had been removed from the office and also when it was returned. I would have to look at that book to refresh my memory, Mr. Coughlan.

Q. Do you have that book available here?

A. Yes, it is in our office.

Q. That is close by? A. Second floor.

Q. Could you procure that easily, that book?

A. I think so.

The Court: What is the purpose of this now?

Mr. Coughlan: I was merely laying some foundation, your Honor, concerning a prior conversation on the same day concerning the transaction that has been testified to here, namely that Mr. Coughlan presented her with a form of an order.

The Court: Well, that doesn't make everything that was said concerning it relevant testimony here, Mr. Coughlan.

Mr. Coughlan: I beg your pardon, sir.

The Court: That doesn't make everything that was said concerning this order relevant here. [67]

Mr. Coughlan: I understand that, your honor.

Q. (By Mr. Coughlan): Do you recall, Mrs.

(Testimony of LaDessa Nordale.)

Nordale, that I talked with you prior to bringing this order? A. No, Mr. Coughlan, I do not.

Q. Do you recall contacting me in regard to getting an order in?

The Court: Well, how would it be material if she had? That is what I am getting at. After all——

Mr. Coughlan: For this reason, your Honor, I should like to bring out that my files and records were attached at that time; that I was asked to get in a final account in this matter and did not have my files and records available to refer to; that the inventory was referred to from the Probate records in Mrs. Nordale's possession at that time.

The Court: Well, if it becomes material you can prove it on your defense, but it is not proper cross-examination.

Mr. Coughlan: Your Honor, the witness has testified concerning something that occurred at a particular date. May I test her memory as to the events that occurred immediately preceding that and immediately after that?

The Court: What has she testified to on which you want to test her memory?

Mr. Coughlan: She has testified concerning the date and the events leading to that particular Identification, the order being filed with her. She [68] states that she received it herself rather than some clerk receiving it.

The Court: What difference does it make who received it? It would be received for the Probate Court.

(Testimony of LaDessa Nordale.)

Mr. Coughlan: I understand that, your Honor, but the testimony was that she received it personally.

The Court: Well, that isn't a material matter here. We have got to stick to material matters or we will never get through.

Q. (By Mr. Coughlan): Mrs. Nordale, would you state whether any particular thing must be done prior to a United States Commissioner signing an order for sale of property or approving the sale?

A. The law requires that certain papers be filed in Probate prior to the approving of a sale.

Q. And what papers are those?

A. Well, they go right down through the Probate papers.

Q. Does the inventory have to be filed?

A. Yes.

Q. Do you recall whether or not you were aware that there had been a sale of personal property at the time that this order was presented to you?

The Court: What difference would it make if she did or did not?

Mr. Coughlan: Your Honor, because there was certain conversation there.

The Court: She is on cross-examination. [69]

Mr. Coughlan: This is not cross-examination, your Honor?

The Court: No, not proper cross-examination, not within the scope of the direct examination.

Q. (By Mr. Coughlan): Would you state whether or not you said that you received these papers directly, I mean in response to a question by

(Testimony of LaDessa Nordale.)

the United States Attorney would you state whether or not you testified here that you personally received the order closing the estate?

The Court: Never mind answering. It makes no difference whether she received it personally.

Q. (By Mr. Coughlan): Did you state in your testimony in response to a question propounded to you by the United States Attorney that you had had a conversation with me at the time of receiving that particular Identification which is an order closing an estate? A. Yes, we discussed it.

Q. Did you state that you had a conversation with me, would you answer that, yes or no, whether you had a conversation?

A. You mean here now?

Q. Yes, did you testify in response to a question?

A. Yes.

Q. Propounded to you by the United States Attorney? A. Yes. [70]

Q. Concerning that conversation that you have testified to here, would you state whether or not you recall that I attempted to have you sign that order without first bringing the checks and the other matters to your attention, bringing them before the Court?

A. You brought it to me personally, Mr. Coughlan, and asked me if I would sign it. You were anxious to close the estate and you were going off on some week end trip. I remember that, and I explained to you the reason why I could not sign it

(Testimony of LaDessa Nordale.)

until the cancelled checks were presented and we could check the final account. Then I recall we went, this happened in the main Commissioner's office there at the old counter. Then we walked into the other office where the girl is that handles probate and I faintly recall that you did ask for some paper and Mrs. McNealy's name came into it. I do recall that.

Q. Now, in connection with that specific conversation, do you recall whether or not I stated to you at that time that my records and files had been attached?

The Court: I have already said it is a matter of defense.

Q. (By Mr. Coughlan): Mrs. Nordale, since you have become United States Commissioner, could you tell me whether or not any of the probate files connected with this estate have been altered?

A. Well, not to the best of my knowledge they have not. [71]

Q. Have not the docket, typewritten docket, has it not been altered?

A. The, a corrected sheet has been——

The Court: Never mind answering that. There is no docket that is in issue here, none whatever. There isn't anything here in the direct examination of this witness as to her records in that respect. I am not going to permit you to launch into an investigation now as to a possible alteration that may have been made over a long period of time in the records. If it becomes necessary to show alterations, you

(Testimony of LaDessa Nordale.)

have evidence of that, you can offer it on your defense.

Mr. Coughlan: If the records or any part of them that have been presented here have been altered, your Honor, and it is within the knowledge of this particular witness——

The Court: You can ask her specifically about any of these. There has been nothing received in evidence. It has been merely marked for identification. If you want to ask her about any of these exhibits for identification you may do so, but only within the scope of the direct examination. She was not examined, or asked anything concerning records of any of these exhibits. So if she didn't go into that it is not within the scope of the direct examination, not proper cross-examination.

Q. (By Mr. Coughlan): Concerning the conversation that you testified to [72] in response to the question propounded by the United States Attorney, do you recall any other fact that you have not mentioned concerning that testimony?

The Court: Better call her attention specifically to some fact you think she has omitted. A general question at this time is not permitted. You can't permit a witness to speculate on the possibility of having forgotten anything. If you think she has forgotten anything just call her attention to it.

Q. (By Mr. Coughlan): Recalling then the specific conversation that was had, according to your testimony between you and myself in the United States Commissioner's office, would you state

(Testimony of LaDessa Nordale.)

whether or not our conversation included the name Mrs. McNealy, or Mary McNealy?

A. Mr. Coughlan, I faintly recall something being mentioned about Mrs. McNealy.

Q. Do you have any recollection concerning that specific conversation wherein it was mentioned that I would need to make the order or had made the order from the files appearing in this Court House?

A. No, I can't recall that, Mr. Coughlan.

Q. Did you testify concerning the same Identifications in a prior action? A. I did.

Mr. Coughlan: That's all. [73]

Mr. Stevens: Just a minute, one question, Mrs. Nordale.

Redirect Examination

By Mr. Stevens:

Q. Mr. Coughlan asked you if you went through the file there with him. Did he question you concerning the appearance of any of these four documents you have identified in that file? A. No.

Q. Did he claim at that time that the signatures thereon were not his? A. No.

Q. Did he claim that they were forgeries?

A. No.

Q. Did he ask to withdraw the file or attempt to check to see where the documents had come from?

A. No.

Q. Did he deny that he as attorney for the estate had filed them? A. No.

Mr. Stevens: Your witness, Mr. Coughlan.

(Testimony of LaDessa Nordale.)

Recross-Examination

By Mr. Coughlan:

Q. Did we examine the file together?

A. I don't recall our doing so, Mr. Coughlan.

Q. Well then, your answers in response to [74] the United States Attorney's were no or in the negative because we had not done any such thing at all. We had not examined any portion of it?

A. To the best of my knowledge you never brought to my attention any record in the probate file of the Silver estate that was questionable in any way and I thought that is what the District Attorney was asking me.

Q. Well, for the record, did we or did we not go through the file together at that time?

The Court: She has already answered that question. You will have to go on to something else.

Mr. Coughlan: It was my understanding, your Honor, that she conditioned it upon her understanding of the United States Attorney's question.

The Court: Well.

Mr. Coughlan: That is all.

Mr. Stevens: Thank you, Mrs. Nordale.

(Witness excused.)

Mr. Stevens: We have one witness that is before the Court just for the purpose of identifying the record. Take a matter of minutes, if your Honor would permit it.

The Court: What kind of record?

Mr. Stevens: The record from the criminal trial.

The Court: Why can't you stipulate?

Mr. Stevens: Will you stipulate that it is?

Mr. Coughlan: I don't know what you are talking about. [75]

Mr. Stevens: Will you stipulate that this record is a record of the criminal trial?

Mr. Coughlan: I will stipulate to the fact that—stamp it for Identification.

The Clerk: Government's or Petitioner's Identification No. 20.

(Record of trial, cause No. 1651 Criminal was marked Petitioner's Identification No. 20.)

The Court: Why mark it for Identification. My question is whether you will stipulate that it is the record?

Mr. Coughlan: That is for the purpose of stipulation, your Honor. We cannot refer to it without an identification mark.

The Court: No use of marking it for identification when it can be marked as an exhibit. It just means duplicating the work.

Mr. Coughlan: We have to have something to refer to it by.

The Court: I don't want to have these marks put on twice because it is just time-consuming. If you can stipulate that is the record it will be marked as an exhibit, not mark it for identification.

Mr. Coughlan: Will you mark it as an exhibit?

Mr. Stevens: Your Honor, the reason we don't ask Mr. Coughlan to stipulate on these things, he always qualifies his stipulations. [76]

The Court: You might as well put the witness on the stand.

Mr. Coughlan: Your Honor, I believe you will accept my stipulation on this thing. I just want to refer to it.

The Court: Just do it in a few words. Don't argue about it.

Mr. Coughlan: I will, your Honor. I stipulate that Petitioner's Exhibit A is a true and correct transcript of the proceedings of cause No. 1651 Criminal, held in the District Court for the District of Alaska, Fourth Judicial Division, United States of America, plaintiff, versus C. P. Coughlan, defendant.

The Court: I should think that would be numbered instead of lettered.

Mr. Coughlan: Your Honor, here in this Court the system has been that for the one party they use numbers for the identification, letters for the exhibits. Then for the other party they use just the opposite. They will use letters for identification and numbers for the exhibit.

The Court: Whatever the local practice is.

Mr. Coughlan: I believe that that constitutes a sufficient stipulation, does it not, your Honor.

The Court: Well, that is up to counsel here. Are you satisfied?

Mr. Stevens: That is an unqualified [77] stipula-

tion that this is a full, true and correct copy of the proceedings before this Court?

Mr. Coughlan: Taken by Esther Midthun, the official court reporter at this time.

Mr. Stevens: Thank you, your Honor. That is accepted.

The Clerk: Petitioner's Exhibit A.

(Record of trial, cause No. 1651 Criminal, was received in evidence as Petitioner's Exhibit A.)

The Court: We will adjourn at this time until 9:30 tomorrow morning.

The Clerk: Court is adjourned until 9:30 tomorrow morning.

(Thereupon, at 5:50 p.m., the trial of this cause was adjourned until March 21, 1955, at 9:30 a.m.) [78]

United States of America,
Territory of Alaska—ss.

I, Mary F. Templeton, official court reporter for the District Court, District of Alaska, Fourth Judicial Division, Fairbanks, Alaska, do hereby certify:

That I was the official court reporter for the above-named Court on March 20 and 21, 1955, the dates upon which the cause entitled *In the Matter of the Disbarment of Cornelius P. Coughlan, Attorney at Law*, was heard;

That I recorded in shorthand all of the oral proceedings had in open Court upon March 20, 1955.

That the foregoing pages, numbered 1 to 78, inclusive, are a full, true, complete and accurate transcript from my original shorthand notes.

Dated at Fairbanks, Alaska, this 13th day of July, 1955.

/s/ MARY F. TEMPLETON.

Subscribed and sworn to before me this 13th day of July, 1955.

[Seal] /s/ JOHN B. HALL,
Clerk of Court. [78-A]

March 22, 1955, 9:30 A.M.

Mr. Stevens: Government is ready to proceed, your Honor. Your Honor, just a statement for the record. I understand there is some misunderstanding concerning my statement in regard to the two photostats of the microfilm checks which appear before the court as exhibits now.

The Court: I think that has been cleared up now, so it is not necessary to refer to it.

Mr. Stevens: Thank you. We call Mr. Cartwright, please.

WILLIAM M. CARTWRIGHT

a witness called in behalf of the petitioner, was duly sworn and testified as follows:

Direct Examination

By Mr. Stevens:

Q. Would you state your name for us, please?

A. William M. Cartwright.

(Testimony of William M. Cartwright.)

Q. Where do you reside, Mr. Cartwright?

A. Fairbanks.

Q. What is your business, sir?

A. I am a cashier of the Bank of Fairbanks.

Q. You were previously on the stand for some length of time in connection with the criminal case against Mr. Coughlan were you not? A. Yes.

The Clerk: Petitioner's Identification No. 20. [80]

Q. (By Mr. Stevens): What was your position at the time you were testifying on the prior occasion?

A. It was auditor of the Bank of Fairbanks.

The Clerk: Petitioner's Identification No. 21.

Q. (By Mr. Stevens): And your duties as auditor were put in the record at that time, were they not? A. That is right.

Q. I hand you Petitioner's Identification No. 20 and ask you——

Mr. Coughlan: Your Honor, I object to any further testimony elicited from this witness until he has been qualified in this particular case.

The Court: Qualified in what respect?

Mr. Coughlan: As to his duties.

The Court: Until he attempts to testify to something for which he needs to show special qualification the objection is overruled.

Q. (By Mr. Stevens): Can you identify that for us? A. Yes, this is a deposit——

Mr. Coughlan: Just a moment, please. I have an objection to make. He has now been asked to identify some particular thing, your Honor, and he has

(Testimony of William M. Cartwright.)

stated that he was an [81] auditor at one time and I believe he stated that he is a cashier at this time and I wish the record to show which one he is testifying to here.

The Court: You have cross-examination and he can't show everything with one question. Now let's not interrupt so much. Objection overruled.

Q. (By Mr. Stevens): Mr. Cartwright, what were your duties as auditor?

A. As auditor I was in charge of verification of records for the bank.

Q. And was it your duty to supervise the keeping of the records for the bank?

A. Yes, it was.

Q. And is the document you have in your hand a record of the Bank of Fairbanks? A. It is.

Q. Could you tell us what it purports to be?

A. This is a deposit slip of the checking account of the Bank of Fairbanks.

Q. Do you have the date of that shown by a stamp on your deposit slip?

A. Yes, this shows the deposit was taken by Note Teller "O," December 17, 1951.

Q. I show you Government's Identification 8, 5 checks in this identification, and ask you if you can state what that is? [82]

A. This is a check drawn on the account of Frederick Donhauser, Administrator of the Silver Estate, dated December 12, 1951, payable to C. P. Coughlan and has a "cash paid" stamp from Note Teller "O," December 17, 1951.

(Testimony of William M. Cartwright.)

Q. The same teller's stamp?

A. The same teller's stamp and the same date.

Q. This is Petitioner's Identification No. 9, Mr. Cartwright. Would you tell us what that is, please?

A. This is a check drawn on the account of the Lomen Commercial Company, the main office of the Seattle First National Bank in Seattle, Washington, in the amount of \$950.00, payable to C. P. Coughlan, Attorney, and shows a "cash paid" stamp of October 3, 1951, and it is endorsed by C. P. Coughlan, Attorney.

Q. The "cash paid" stamp, does it also show where the cash was paid?

A. It was paid at Cage 2 of the Bank of Fairbanks.

Q. And could you tell us what those two stamps together would mean to you as auditor of the Bank of Fairbanks, in regards to that check?

A. Well, cash was paid to the endorser of the check.

Q. This is Petitioner's Identification No. 1, Mr. Cartwright. Would you identify that for us?

A. This is a signature card of the account of Cornelius P. Coughlan which was taken from the Bank of Fairbanks signature card file. It was accepted by the bank on April 12, 1951. [83]

Q. Now, what is the purpose of such a card in your bank?

A. To show the authorized signature of the checking account at the bank.

(Testimony of William M. Cartwright.)

Q. This is Petitioner's Identification No. 22, Mr. Cartwright. Would you tell us what that is, please?

A. This is a ledger sheet of the account of Cornelius P. Coughlan of his checking account at the bank.

Q. And is that a record kept in the normal course of business in your bank? A. It is.

Q. Is it normal course of business to keep such a record? A. Yes.

Q. Can you locate the item we have previously discussed, the \$400.00?

A. This ledger sheet shows a \$400.00 deposit on the account of Cornelius P. Coughlan on December 17, 1951.

Q. What other deposits does this record show, Mr. Cartwright?

A. January 8, 1952, a deposit of \$100.00; September 24, 1951, a deposit of \$500.00; October 3, 1951, a deposit of \$500.00; November 28, 1951, a deposit of \$19.78.

Q. There was a deposit on October 3, you stated?

A. Yes, in the amount of \$500.00.

Q. That was the same date that Petitioner's Identification No. 9 was endorsed through your bank, is that correct?

A. That is correct. [84]

Q. I hand you Petitioner's Identification No. 21 this time, Mr. Cartwright, and could you tell us what that is, please?

A. This is the original ledger sheet of the checking account of the Estate of Raymond Silver, de-

(Testimony of William M. Cartwright.)

ceased, showing the authorized signer to be Frederick Donhauser, as administrator.

Q. Now, would you tell us whether or not that ledger sheet shows the withdrawal of three \$1,000.00 checks? A. It does.

Q. And what are the dates that those checks went through your bank?

A. On December 17, 1951, January 15, 1952, and April 5, 1952.

Q. I hand you Petitioner's Identification No. 10 and ask you if you can state what that is?

A. This is a photostat copy that was taken from the microfilm records from the Bank of Fairbanks of a check in the amount of \$1,000.00 drawn by Frederick Donhauser, as Administrator of the estate of Raymond Silver, deceased, dated January—I believe it is 12, 1952, payable to C. P. Coughlan and it bears the endorsement of C. P. Coughlan.

Q. Mr. Cartwright, does your bank keep records of the checks which pass through the accounts of your depositors? A. We do.

Q. And how are those records kept?

A. We microfilm all items going through the bank.

Q. And was there microfilm kept of the [85] account of the estate of Raymond Silver?

A. Yes.

Q. And have you previously located the checks which passed through that account for the purpose of presenting the microfilm in court?

(Testimony of William M. Cartwright.)

A. I have.

Q. And you presented the film itself in court, did you not? A. Yes.

Q. And is this Identification No. 10 related to that demonstration that you made?

A. Yes.

Q. What is this Identification No. 10 in regards to the microfilm?

A. It is a photostat copy from the microfilm——
Mr. Coughlan: I can't hear the witness.

A. It is a photostat copy of the microfilm check.

Q. And this photostat copy is a copy of a copy you made of the checks on microfilm, is that correct?

A. Yes.

Q. Is it sufficiently clear so that you can identify the account, the amount, the date, and the endorser?

A. Yes.

Q. I hand you Petitioner's Identification No. 11, Mr. Cartwright. Could you tell us whether or not that is also a photostat of a microfilm copy of the check of your bank? [S6]

A. It is.

Q. Can you tell us the account upon which that Identification No. 11 was drawn?

A. It was drawn on the account of Frederick Donhauser as Administrator of the estate of Raymond Silver, deceased.

Q. And is it sufficiently clear on the reverse side so you can tell the endorser and where the check was negotiated? A. Yes.

Q. Would you tell us, please?

(Testimony of William M. Cartwright.)

A. It was endorsed by C. P. Coughlan and was negotiated through the First National Bank of Fairbanks on April 4, 1952.

Mr. Coughlan: I am going to move that that last question be struck for the reason that there has been no foundation shown that this man recognizes that the check was endorsed by any particular person. There is no showing that he is an expert in the field of handwriting and can determine who actually endorsed the check. He may state, I believe, under his qualification and on the witness stand that there appears to be words and letters spelling C. P. Coughlan as an endorsement, but stating that it was endorsed by C. P. Coughlan, unless it was done in his presence or there is a foundation laid to the effect that he is a handwriting expert, makes it incompetent evidence.

The Court: Objection overruled. Nobody has to testify to anything absolutely. He may testify in court to his best knowledge and recollection. That is sufficient to make it [87] competent. Proceed.

Q. (By Mr. Stevens): You had a signature card, which was previously identified here as Petitioner's Identification No. 1, in possession of your bank at that time, did you not? A. Yes.

Q. And the statements for the account of Raymond Silver, to whom did you send those? Does your card show you—what is that? Identification No. 21? A. Yes.

Q. Does Identification No. 21 show you where you sent the statements for this account?

(Testimony of William M. Cartwright.)

A. The statements were sent in care of C. P. Coughlan, Nordale Hotel, City.

Q. How often does your bank send statements?

A. Monthly.

Q. Now, at the first of 1952, in January of 1952, did Mr. Coughlan come to you and claim there were forgeries in the account of the estate of Raymond Silver?

A. Not to me personally.

Q. Do you know if he appeared at the bank at any time before all this action was started, before the criminal case or the seizure of the records by the Government? Do you know if he came to your bank, of your own knowledge, and made an allegation of forgery on the account of Raymond [88] Silver?

A. I was told by Mr. Johnson, president of the bank, that he had appeared and made such a statement.

Q. Do you know when that was?

A. I don't remember when it was.

Q. Mr. Johnson is no longer with you, is that right?

A. That is right.

The Court: Who told you that he appeared before Mr. Johnson?

A. Mr. Johnson did.

The Court: Do you recall whether that was before there were any charges made against the Respondent?

A. I am certain it was.

The Court: Why are you certain? I mean, how can you be sure?

(Testimony of William M. Cartwright.)

A. Because as I remember it was Mr. Coughlan's statement to Mr. Johnson; that was our first indication that there was pending trouble with this account.

The Court: What did the bank do about it?

A. We investigated the checks on our microfilm records then.

The Court: Did you report it to the United States Attorney?

A. I don't know whether such a report was made to him then or not.

The Court: Well, was it ever made to the United States Attorney? [89]

A. I can't testify as to that.

The Court: What did the bank do about it besides examining the records?

A. Mr. Johnson actually handled the negotiations regarding this claim and I personally did nothing about it until the case came to court.

Mr. Stevens: The testimony of Mr. Johnson, in regard to this, appears in the record which has already been entered, your Honor, at page 57—beginning at page 56 he was qualified, stated his name. Your witness, Mr. Coughlan.

WILLIAM M. CARTWRIGHT

testified as follows on

Cross-Examination

By Mr. Coughlan:

Q. Mr. Cartwright, referring to Identification No. 20. That appears to be a deposit slip?

A. Yes.

Q. From that deposit slip and your experience at the bank can you state what it purports to show? In other words, explain what the deposit slip means?

A. It is the entry that covers \$400.00 deposit to the account of C. P. Coughlan.

Q. And does it show how the deposit was made?

A. I don't follow you.

Q. You have stated that it is for the purpose of recording [90] a deposit to a certain account. Does the words or figures thereon signify it was made in a particular manner, the deposit? In other words, in cash specie, check, draft, or other method.

A. The figures show opposite the word "check."

Q. And from your experience in the bank and your knowledge of this particular Identification, which is Identification No. 20, would you state whether or not such a deposit slip indicates that a \$400.00 check was deposited to that account?

A. I can't tell from the way the deposit slip is made up for sure what actually was deposited.

Q. Yes. Normally is that not the custom of your bank, when a person deposits a check in the sum of

(Testimony of William M. Cartwright.)

\$400.00 to have that person or one of the tellers make out a deposit slip wherein the name of the account is placed on the top of the deposit slip and the figure \$400.00 is put adjacent to the word "check" or "checks"? A. That is customary.

Q. Therefore, that would indicate, would it not, that a \$400.00 check had been deposited on that date?

A. As I said before, I can't tell for sure. The custom quite frequently is to put figures any place on the deposit ticket.

Q. I see, but the purpose of it—I mean, the purpose of the deposit slip is to attempt to keep a record showing checks on the deposit slip, is that not right? Deposits by check?

A. That is the idea of making the deposit slip the way it is. [91]

Q. And that deposit slip indicates in general practice the general useage of that particular form of deposit slip, that \$400.00 was deposited by check on that particular day? In other words, a \$400.00 check was presented to the particular teller for deposit to the account that appears on the top of the slip? Is that not correct?

A. That is what is apparently shown here.

Q. Now, referring to Petitioner's Identification No. 8. I am referring to the same check in Petitioner's Identification No. 8 that you were questioned concerning—by the Petitioner's attorney. Is that the last check in that series of checks making up that identification?

(Testimony of William M. Cartwright.)

A. This is the check dated December 17, 1951, and this is the last check in this particular group.

Q. Now, would you state what date appears that that identification was cashed on?

A. December 17, 1951.

Q. Now, you referred to a ledger sheet of the account of C. P. Coughlan wherein there was a notation concerning the 17th—or the same date that that appeared, Petitioner's Identification No. 22, is that not correct?

A. You have reference to the deposit that was made in this account on the same date?

Q. Yes. Did you say that there was a deposit made on the same date? [92]

A. Yes, there was a deposit made on December 17 in the amount of \$400.00.

Q. In the amount of \$400.00? A. Yes.

Q. And was there any other deposit made on that date? A. No.

Q. And Petitioner's Identification No. 20 is the deposit slip that covers that particular deposit, is that correct? A. That is correct.

Q. Now, is there any indication that the check appearing as the last check in the series of checks making up Petitioner's Identification No. 8 had anything whatsoever to do with that deposit?

A. Other than the date there is no physical tie-up.

Q. The check is for the sum of \$1,000.00, is it not? A. Yes.

Q. The check for deposit was in the sum of

(Testimony of William M. Cartwright.)

\$400.00, is that not correct, as shown on the deposit slip, Identification No. 20?

A. I don't know if it was a check that was deposited for \$400.00.

Q. Sir, you have referred to the endorsements appearing on the back of the various checks presented to you by the Petitioner, is that not correct?

A. Yes. [93]

Q. You are not a handwriting expert, are you?

A. No.

Q. I would ask you, sir, whether the ledger sheets that you have here, purporting to be a portion of my account with your bank, is that, to your knowledge, a full ledger of all of my account with your bank?

A. No. This covers the period from September 6, 1951, to January 8, 1952.

Q. From your examination of Petitioner's Identification No. 1, which appears to be a signature card connected with that particular account, could you state whether there should be other ledger sheets? A. Yes, there should be.

Q. At the time of the last trial did you have the other ledger sheets here?

A. I don't remember for sure. I don't think so. I think this was the only one.

Mr. Coughlan: Mr. Stevens, do you have the other ledger sheets on that particular account?

Mr. Stevens: No, that is the only ledger sheet I have which was in evidence in the former case.

Q. (By Mr. Coughlan): Sir, do I understand

(Testimony of William M. Cartwright.)

that your testimony here elicited from the Government has been concerning the files and records of the bank, as an officer of that bank and not from your own personal [94] independent recollection of any particular transaction that has occurred concerning these identifications themselves?

A. That is right. I am testifying from the records.

Q. Concerning Petitioner's Identifications Nos. 11 and 10, which purport to be photo copies made from a microfilm, did you make them yourself?

A. I don't have the identifications you refer to.

Q. Those are Petitioner's Identifications 10 and 11 which the court is holding?

(Thereupon, the documents referred to were handed to the witness.)

A. No, I didn't make them myself. I caused them to be made.

Q. Beg your pardon?

A. I caused them to be made.

Q. Would you examine them for a moment in respect to their clarity. For the record would you state your opinion concerning their clarity in respect to your knowledge of the regular printed form that the Bank of Fairbanks uses for that particular check?

A. They are not as clear as the original record.

Q. Are they considerably less clear than an original check on that particular type form?

A. In some respects, yes.

(Testimony of William M. Cartwright.)

Q. In respect to the time within which these checks were purportedly transmitted through your bank, could you state whether Phillip A. Johnson was the bank president during that time?

A. Yes, he was. [95]

Q. And he was the officer under whom you were employed? A. Yes.

Q. As an officer of that particular bank and particularly during the time covered within the scope of those checks, could you state whether or not from your memory there was some hard feelings between Mr. Johnson, other members of the Board of Directors, and myself?

The Court: Never mind answering that question. There has been no foundation laid for any such question. It might be a matter of defense, but not at this time.

Q. (By Mr. Coughlan): From your examination of Petitioner's Identification 21, which purports to be the ledger of the Raymond Silver account with your bank, could you state whether that is a full ledger of the estate account?

A. Up to May 28, 1952, yes.

Q. From the date that it was originally opened to that date it is a full detailed account?

A. Yes.

Q. From your examination of that particular ledger could you state how much moneys were deposited to the account of Raymond Silver during that period of time?

A. There were 3 deposits made.

(Testimony of William M. Cartwright.)

Q. And what were they, sir?

A. On May 19, 1951, \$552.68; on August 6, 1951, \$6,982.50; [96] and on May 19, 1952, \$1,179.90.

The Court: I presume that the Petitioner is going to offer these exhibits in evidence. Am I correct?

Mr. Stevens: Yes, your Honor.

The Court: It is not necessary to ask the witness questions like this last one as to what the record shows. The records speak for themselves.

Mr. Coughlan: Yes, your Honor. That is true. That was my last question. I merely wanted to have that for my own personal information here. That is all, Mr. Cartwright.

The Clerk: Petitioner's Identification No. 23.

WILLIAM M. CARTWRIGHT

testified as follows on

Redirect Examination

By Mr. Stevens:

Q. This is Petitioner's Identification No. 23, Mr. Cartwright. Would you tell us what that is?

A. This is a portion of what we call the note blotter which is a record of payments made on notes at the Bank of Fairbanks and this particular note blotter is dated December 17, 1954.

Q. Can you find an item on the record which is connected with Mr. Coughlan? A. Yes.

Q. What is that item?

(Testimony of William M. Cartwright.)

A. It shows a payment of \$600.00 on a note of Cornelius P. Coughlan. [97]

Q. On that date, December 17, 1951?

A. That is correct.

Q. And is that a record of your bank and note teller's blotter? A. It is.

Q. Is the record kept in the normal course of business? A. Yes.

Mr. Stevens: Your Honor, the testimony of Mr. Frey, the note teller, appears in the record at 249. It is quite lengthy and as far as the Petitioner's position is concerned we do not intend to call Mr. Frey in view of that testimony.

The Court: Did you mention the page number?

Mr. Stevens: 249, your Honor. Your witness, Mr. Coughlan.

WILLIAM M. CARTWRIGHT

testified as follows on

Recross-Examination

By Mr. Coughlan:

Q. Mr. Cartwright, referring to Petitioner's Identification No. 23, concerning which you were just examined. You stated that it is a portion of a note blotter. Would you explain that?

A. Well, it is a part of the note blotter for that day. In other words, there was more than one sheet.

Q. There was more than one sheet of note transactions appearing on that particular date, is that

(Testimony of William M. Cartwright.)

correct? [98] A. Correct.

Q. What did you say the date of that was, 12/17/51? A. December 17, 1951.

Q. From your knowledge of that particular—I will ask you this: Are you acquainted with how the note blotter is kept during the normal course of business at that bank? A. Yes.

Q. Can one examine the note blotter and determine how any particular payment has been made?

A. As to whether it was cash or check?

Q. Yes. A. No.

Q. Referring to Petitioner's Identification No. 8, which was the last check in that series within the identification——

The Court: This is not recross-examination. You are limited on recross to examination concerning this blotter.

Mr. Coughlan: I understand that, your Honor. I was merely going to refer to the blotter.

The Court: Very well. We will see what your question is. Go ahead.

Q. Referring to the last check contained in Petitioner's Identification No. 8, which you stated bears a sign or symbol which determines that cash was given for it——

Mr. Stevens: I don't believe the record shows that, your Honor. I believe this witness stated contrary to that. [99]

The Court: I don't recall any such thing in the testimony of this witness.

(Testimony of William M. Cartwright.)

Mr. Coughlan: Might I ask the witness if he did testify to that?

The Court: Yes, if it has a bearing on this blotter.

Mr. Coughlan: Yes, I believe so.

Q. (By Mr. Coughlan): Mr. Cartwright, does that last check in Petitioner's Identification No. 8 bear any symbol of your bank that shows that the transaction was a cash transaction, that the teller paid cash for it?

A. The teller's stamp on the face of this check does denote that it was an item for which cash was paid.

Q. Now, referring to the blotter, which is Petitioner's Identification No. 23, I believe you have already answered the question as far as that is concerned—you stated that you cannot tell from that blotter whether or not any particular check or particular cash was used to make the payment of \$600.00 that was indicated to have been paid on December 17, 1951, can you? A. That is right.

Mr. Coughlan: That is all.

WILLIAM M. CARTWRIGHT

testified as follows on

Reredirect Examination

By Mr. Stevens: [100]

Q. Is that a stamp of the cash teller or the stamp of the note teller?

A. This is a note teller's stamp.

(Testimony of William M. Cartwright.)

Q. And that stamp is the same stamp that appears upon the deposit slip and is the stamp of the person who was handling the note blotter, is that correct? A. That is correct.

Mr. Stevens: Thank you, Mr. Cartwright.

The Court: Have you any further questions, Mr. Coughlan?

Mr. Coughlan: Yes, I do.

WILLIAM M. CARTWRIGHT

testified as follows on

Rerecross-Examination

By Mr. Coughlan:

Q. Mr. Cartwright, is it not a fact that at the time that we were referring to, December 17, 1951, the Bank of Fairbanks employed tellers and that all of the tellers were ordinary tellers and transacted the business of taking and receiving deposits, making change, etc.? Each of the tellers in the bank did that, did they not?

A. All except the note teller.

Q. Did not the note teller? Was he not a regular teller also?

A. Only in transactions that were incidental to note transactions. [101]

Q. Was it not your testimony at a prior time that the note teller did the regular normal duties of the other tellers besides taking care of notes?

A. Where other transactions were tied in with the note transactions.

(Testimony of William M. Cartwright.)

Q. Then, for instance, if a person came there and wished to make a deposit in cash to his account, then he would take the deposit, would he not?

A. You mean the note teller would take it?

Q. Yes.

A. Usually only if it were tied up with the note transaction.

Q. That is what I am referring to. In this particular phase of his duties there was nothing that distinguished the note teller from the other tellers excepting that he kept up this note blotter and kept the note accounts, is that not correct?

A. That is right. He handled all the note transactions passing through the bank.

Q. And, as well as that, when a person came in on a note matter he would handle other deposits and withdrawals as well, is that not correct?

A. Yes.

Q. But is it not also a fact that there was nothing in the rules of the bank to prevent him from taking deposits otherwise?

A. That is right. There was nothing to prevent him from doing it. [102]

Q. And was it not a fact that during certain times of the month and certain times of the day that the note teller would not ordinarily be busy, whereas, the other tellers would be and he would—

The Court: Is all this material? Do we have to go into every trivial detail of the duties of these tellers?

Mr. Coughlan: I wanted just one thing clear for

(Testimony of William M. Cartwright.)

the record, your Honor, and that is in regards to the tellers there. I thought it would only take a moment at the time because of the past testimony.

The Court: It doesn't make any difference what you want to do, it has got to be relevant and material to the issues here and if it isn't it doesn't belong in the case and the court hasn't got time to listen to it.

Mr. Coughlan: Your Honor, this was testimony concerning the particular stamp that was first elicited by the Petitioner.

The Court: That doesn't open up the examination to these details. I don't know how it could possibly be relevant as to the division, subdivision of duties, as to these details in the bank.

Mr. Coughlan: Well, your Honor, it would be relevant concerning how the stamp is used and it is significant as of that particular date.

The Court: Well, it doesn't appear to me that it would be relevant in any respect. [103]

Mr. Coughlan: That is all.

Mr. Stevens: We offer into evidence Petitioner's Identification No. 1, signature card from the Bank of Fairbanks.

The Court: It may be admitted.

Mr. Coughlan: I will object to its admission, your Honor, at this time on the ground that it is irrelevant.

The Court: Overruled.

The Clerk: Petitioner's Exhibit B.

(Bank of Fairbanks signature card was marked Petitioner's Exhibit B.)

Mr. Stevens: We offer Identification No. 20, the deposit slip of December 17, 1951.

The Court: It may be admitted.

The Clerk: Petitioner's Exhibit C.

Mr. Coughlan: Objected to on the same ground.

The Court: Same ruling.

(Deposit Slip of December 17, 1951, was marked Petitioner's Exhibit C.)

Mr. Stevens: We offer Petitioner's Identification No. 22, the bank record of the account of Cornelius P. Coughlan.

The Court: It may be admitted.

Mr. Coughlan: Same objection.

The Court: Same ruling.

The Clerk: Petitioner's Exhibit D. [104]

(Bank record of the account of Cornelius P. Coughlan was marked Petitioner's Exhibit D.)

Mr. Stevens: We offer Identification No. 21 in evidence of the account of the Estate of Raymond Silver of the Bank of Fairbanks.

The Court: It may be admitted.

Mr. Coughlan: Objection, same ground.

The Court: Same ruling.

The Clerk: Petitioner's Exhibit E.

(Account of the Estate of Raymond Silver of the Bank of Fairbanks was marked Petitioner's Exhibit E.)

Mr. Stevens: We offer Petitioner's Identification No. 9, your Honor, check in the amount of \$950.00 of the Lomen Commercial Company. It has been identified as having passed through the Bank of Fairbanks by Mr. Cartwright, and the testimony of Harry G. Carlson appears at page 332 in the record. Mr. Carlson was the manager of the Lomen Commercial Company and has identified this check at length.

The Court: It may be admitted.

Mr. Coughlan: Your Honor, I object to Petitioner's Identification 9, if it goes into evidence, on the ground it is incompetent and irrelevant.

The Court: Objection overruled. [105]

The Clerk: Petitioner's Exhibit F.

(Check in amount of \$950.00 from Lomen Commercial Company was marked Petitioner's Exhibit F.)

Mr. Stevens: We offer the note blotter, or portion of the note blotter, which is Identification No. 23, identified by Mr. Cartwright as the record of the Bank of Fairbanks kept in normal course of business.

The Court: It may be admitted.

Mr. Coughlan: I object to that exhibit, your Honor, on the ground that it is irrelevant and immaterial.

The Court: Objection overruled.

The Clerk: Petitioner's Exhibit G.

(Note Blotter of the Bank of Fairbanks was marked Petitioner's Exhibit G.)

Mr. Stevens: We offer Identification No. 10, which is a photostat of the microfilm copy of check dated January 12, drawn on the bank account of the Estate of Raymond Silver.

The Court: It may be admitted.

Mr. Coughlan: I object to that exhibit on the ground it is irrelevant.

The Court: Objection overruled.

The Clerk: Petitioner's Exhibit H.

(Photostat of check in the amount of \$1,000.00 was marked Petitioner's Exhibit H.)

The Court: All of these have been identified and testified to, so you can offer them as a lot to be numbered or lettered consecutively.

Mr. Stevens: I am sorry, our practice is that they have to be admitted individually.

The Court: I don't know why we have to go over a description of each one of them. They have all been thrashed out here.

Mr. Stevens: Our last offer is Identification No. 11, your Honor.

Mr. Coughlan: I object to it, your Honor, on the ground it is irrelevant and incompetent.

The Court: Objection overruled, it may be admitted.

The Clerk: Petitioner's Exhibit I.

(Photostat of check in the amount of \$1,000.00 was marked Petitioner's Exhibit I.)

Mr. Stevens: In conformance with the court's instruction we will offer Identification Nos. 7, 19, 12, 13, 14, 15, 16, 17 and 18.

The Court: They may be admitted.

Mr. Coughlan: Your Honor, I will object to admitting them as a group and object to each and every one of them as being irrelevant and incompetent.

The Court: Objection overruled, they may be admitted. [107]

(Petitioner's Identifications 7, 19, 12, 13, 14, 15, 16, 17 and 18 were admitted in evidence as Petitioner's Exhibits J, K, L, M, N, O, P, Q, and R, respectively.)

Mr. Stevens: And I similarly offer Identifications Nos. 2, 3, 4 and 5.

Mr. Coughlan: Same objection, your Honor, as the last objection.

The Court: Same ruling. They may be admitted.

(Petitioner's Identifications Nos. 2, 3, 4 and 5 were admitted in evidence as Petitioner's Exhibits V, W, T and U, respectively.)

Mr. Stevens: Thank you, Mr. Cartwright.

(Thereupon, the witness was excused and left the stand.)

Mr. Stevens: Mrs. Bowers.

MYRTLE BOWERS

a witness called in behalf of the petitioner, was duly sworn and testified as follows:

Direct Examination

By Mr. Stevens:

Q. Would you state your name, please?

A. Myrtle Bowers.

Q. And where do you reside, Mrs. Bowers?

A. Fairbanks, Alaska.

Q. What is your occupation? [108]

A. Legal stenographer, secretary.

Q. For whom? A. Collins and Clasby.

Q. Will you examine Identification 6 and tell us what that is, please?

A. It is a check drawn on the account of Collins and Clasby made payable to Jack Coughlan in the amount of \$117.29.

Q. And does your signature appear on the reverse of that as endorsement? A. Yes, it does.

Q. And does Mr. Coughlan's signature also appear? A. Yes.

Q. Do you know Cornelius P. Coughlan as Jack Coughlan? A. I do.

Q. And inasmuch as your endorsement appears on the reverse of that check, would you tell us what that would mean in your normal office procedure?

A. Quite frequently when I would be going to the bank Jack would ask me to cash checks for him and bring back the cash, so that is why my signature appears below his.

Mr. Stevens: Your witness, Mr. Coughlan.

MYRTLE BOWERS

testifies as follows on

Cross-Examination

By Mr. Coughlan: [109]

Q. Mrs. Bowers, do you recall whether or not the checks were normally made "Jack Coughlan" or "C. P. Coughlan" at that time?

A. They were made out both ways, as I remember. I was in the habit of calling you Jack, so half of the time I am sure I made out your checks to Jack Coughlan.

Q. Yes.

Mr. Coughlan: That is all.

Mr. Stevens: We offer Identification No. 6 in evidence.

Mr. Coughlan: I object to it, your Honor, on the ground it is irrelevant.

The Court: Objection overruled. It may be admitted.

(Petitioner's Identification No. 6 was admitted in evidence as Petitioner's Exhibit S.)

Mr. Stevens: Thank you, very much, Mrs. Bowers.

(Thereupon, the witness was excused and left the stand.)

Mr. Stevens: Your Honor, Mr. McFarland is on his way up from the First National Bank and he will be here in approximately 3 or 4 minutes.

The Court: We will recess for 5 minutes.

(Thereupon, at 10:38 o'clock a.m., following a 5-minute recess, court reconvenes, and the following proceedings were had:)

Mr. Stevens: I am sorry, your Honor, Mr. McFarland couldn't be located. We will call Mr. Donhauser instead while [110] we are waiting for Mr. McFarland.

FREDERICK DONHAUSER

a witness called in behalf of the petitioner, was duly sworn and testified as follows

Direct Examination

By Mr. Stevens:

Q. Would you state your name, please?

A. Frederick Donhauser.

Q. Where do you reside? A. Stony River.

Q. Were you the administrator for the estate of Raymond Silver? A. I was.

Q. How did you secure that appointment?

A. Through Clinton Stewart.

Q. What was Mr. Clinton Stewart at that time?

A. He was commissioner.

Q. Did you hire an attorney?

A. Yes, I did.

Q. Who was that attorney?

A. Well, I started off with Parrish and then hired Jack.

Q. And did Mr. Coughlan prepare this petition, which is Exhibit P, for you? A. Yes. [111]

Q. Is your signature on that? A. Yes.

Q. And your signature was notarized?

(Testimony of Frederick Donhauser.)

A. Yes.

Q. By Mr. Coughlan?

A. I don't remember whether it was by him or by his secretary. I guess—it says here by him.

Q. To your knowledge did his secretary ever sign his name and use his seal?

A. I don't know.

Q. I will hand you Petitioner's Exhibit W, which is your own oath as administrator. Is that your oath?

A. That is my oath.

Q. And does your signature appear on it?

A. That is my signature.

Q. Was Mr. Coughlan your attorney at that time?

A. Yes, he was.

Q. I hand you Exhibit U, Petition for Final accounting, and the last page purports to be your signature. Could you tell us, is that a signature of yours?

A. Well, could be. I don't know.

Q. You print your name, do you not, Mr. Donhauser?

A. How do you mean?

Q. Your normal signature is printed?

A. No, I write it. [112]

Q. Was Mr. Coughlan representing you in January of 1952 in connection with the Estate of Raymond Silver?

A. Yes, he was.

Q. And did you go to his office to prepare the documents to wind up the Estate?

A. Yes, I did.

Q. And did you sign documents which he told you were necessary to wind up the Estate?

A. I believe I signed some, yes.

(Testimony of Frederick Donhauser.)

Q. You have no independent recollection at this time of signing this document, is that your statement?

A. No. May I see it? I recognize this document, but I don't know whether it was this one or—well, these figures I am not sure—no, I couldn't swear to it.

Q. I hand you Government's Identification 8, consisting of 5 checks——

Mr. Coughlan: Is that identification or an exhibit at the present time?

Mr. Stevens: Identification.

Q. Those 5 checks purport to be signed by you and drawn upon the account of the Estate in which you were the administrator, payable to Mr. Coughlan, and in the 5 checks is a check for \$1,000.00. Did you draw a check payable to Mr. Coughlan in the amount of \$1,000.00 on that account?

A. I don't remember. I don't think I did, but I am not [113] quite sure. It depends on what had been paid to him before that.

Q. Well, I hand you Government's Exhibit H, which is a check in the amount of \$1,000.00, similar to the check you have in your hand, dated the 12th day of January, 1952. And I hand you Government's Exhibit I, which is another check in the amount of \$1,000.00, dated in March, 1952, and drawn on the same account. Did you authorize the withdrawals of those 3 \$1,000.00 checks payable to Mr. Coughlan personally?

A. No, I didn't.

Q. I hand you Government's Exhibit F, which

(Testimony of Frederick Donhauser.)

is a check in the amount of \$950.00 from the Lomen Commercial Company. Were you acquainted with a truck which was located in Nome in connection with this Estate? A. Yes, I was.

Q. And were you acquainted with proceedings leading to the sale of the truck?

A. I gave Jack permission to sell it, yes.

Q. And did you receive payment for the truck?

A. No.

Q. To your knowledge did you ever discuss the payment of the truck with Mr. Coughlan?

A. Beforehand I think—oh, just before—I think it was in April or May before I went down the road—maybe it was in December, I don't know—I mean, in October, '51. I mean, I told him to get rid of it. [114]

Q. Did you authorize him to accept the \$950.00 and use the money personally? A. Oh, no.

Q. Did you prepare checks for Mr. Coughlan to use in disbursing the assets of the Estate?

A. I signed a number of blank checks.

Q. And those had no figure or no payee written in on the checks at all? A. No.

Q. And how did you happen to do that, Mr. Donhauser? A. Well, on his advice.

Q. Were you to leave the area at that time?

A. No, I think this is when—well, it first started, then I did leave the area in October, I believe, of '51—October or November, I am not quite certain of that, and that is when I gave Jack power of attorney.

(Testimony of Frederick Donhauser.)

Q. Did you give him a Power of Attorney at some time? A. Yes.

Q. To sign your name in connection with this Estate? A. Yes.

Mr. Stevens: We offer the 5 checks, Government's Identification 8, your Honor.

The Court: It may be admitted.

Mr. Coughlan: They will be objected to upon the grounds they are incompetent and irrelevant. [115]

The Court: Objection overruled.

The Clerk: Petitioner's Exhibit X.

(Five (5) checks were marked as Petitioner's Exhibit X.)

Mr. Stevens: I call the court's attention to the fact that Mr. Donhauser was on the stand for quite some length of time during the preceding trial. His testimony appears at page 73; he was recalled for cross-examination at page 118; there was some re-direct examination at page 124; he was recalled again at page 424, and his testimony appears for some 30 pages thereafter. Your witness, Mr. Coughlan.

FREDERICK DONHAUSER

testified as follows on

Cross-Examination

By Mr. Coughlan:

Q. Mr. Donhauser, do you recall when you first procured my services in respect to the Raymond Silver Estate? A. Yes.

(Testimony of Frederick Donhauser.)

Q. In relation to the time that you procured my services in that respect when was it that you state that you wrote blank checks and left them with me?

A. That was at the beginning, or when the Estate first started, then I think that night I left for Outside I wrote some also. That was—well, I don't know, October or November. [116]

Q. And do you have a clear recollection of that?

A. The first time very clear, yes.

Q. Do you recall what those checks were left for?

A. To carry on the business of the Estate.

Q. Do you recall specifically what that particular business was?

A. Oh, I think there was a bond and there was the funeral expenses and——

Q. They were the regular normal bills that were approved by you to be paid by the Estate?

A. Yes.

Q. And were you aware of how many of those bills you had examined and determined were just debts of the Estate?

A. I believe so, yes.

Q. So, at the time you knew how many checks would be needed, is that not correct?

A. Oh, no.

Q. To your knowledge have those bills been paid?

A. I think everything was paid up, yes.

Q. Do you recall whether or not you gave me any checks over and beyond what the bills of the Estate were?

(Testimony of Frederick Donhauser.)

A. What do you mean "gave me any checks"? Blank checks?

Q. Well, any kind of check?

A. Well, there were a number of checks that were signed by myself. [117]

Mr. Coughlan: Mr. Stevens, do you have those checks here that were paid to the bondsmen, to Jessen's Weekly, the funeral parlor, and so on?

The Court: Unless they can be identified they were the checks that were left in blank——

Mr. Coughlan: Yes, that is what I intend to do, your Honor. Do you have them, Mr. Stevens?

Mr. Stevens: To my knowledge I don't, Mr. Coughlan. I believe they were all returned to you, were they not?

Mr. Coughlan: Returned to me? There has been nothing returned to me in any way, form or shape.

Mr. Stevens: You are most welcome to look over the matters we have here to see if you want any of it. To my knowledge we don't have the checks.

Mr. Coughlan: They should in all probability be in the Estate file as a portion of the final account.

Mr. Stevens: I believe the documents in—there are some documents involved in this Estate file.

Q. (By Mr. Coughlan): Mr. Donhauser, were you in the Territory of Alaska in January of 1952?

A. No, I wasn't.

Mr. Stevens: Mr. Coughlan, there does appear to be several checks here payable to Jessen's Weekly, Fairbanks Insurance Agency, Mr. Donhauser and Martin Shafer, if you would like to have those. [118]

(Testimony of Frederick Donhauser.)

Mr. Coughlan: Yes, if I could, please. (The documents were handed to Mr. Coughlan.) I will ask that these be marked for identification, please.

The Clerk: All together or individually?

Mr. Coughlan: Either one.

The Clerk: Respondent's Indentification B.

Mr. Coughlan: Would it be proper, your Honor—oh, I would like this—where we have several checks together, to number the checks, for clarity in the record, under B, say, for instance, 1, 2, 3, 4 and 5 so when we refer to any particular one it would be clear.

The Court: If there is going to be testimony concerning each of the checks, of course, they should be marked separately, but right here I might as well warn you I am not going to permit examination of the details of transactions represented by these checks because it would be wholly without value until first it is shown the number of checks that were issued by the witness in blank and then what they were used for, otherwise, we would just simply be wasting hours exploring something of no pertinency.

Mr. Coughlan: I understand that, your Honor.

Q. (By Mr. Coughlan): I hand you Respondent's Indentification B and ask you to examine it. Have you completed your examination?

A. Yes.

Q. Could you state whether or not those are the checks [119] that you are referring to that were left with me, or were a portion of those the checks that you state were left with me?

(Testimony of Frederick Donhauser.)

A. Well, I think all of them were left. I think they were the ones that were left with you.

The Court: Were they all that you signed in blank?

A. They appear to be so.

The Court: It isn't whether all of those were signed in blank, but did you sign any more than those you have in your hand?

A. I believe so, yes.

The Court: So we are back to where we started from. The purpose, as I see it, of introducing evidence concerning the leaving of the checks by the administrator signed in blank, is of showing that they could have been used, because they already had his signature, for improper poses, and so that cannot be rebutted by accounting for any less than the number of checks he left signed.

Mr. Coughlan: Your Honor, at this time I was only referring to those particular checks that he now has and has now identified in order to determine whether they were the checks that he had mentioned when responding to a question propounded by the United States Attorney and he has stated that they are.

The Court: He answered it. I am just commenting on the fact I am not going to permit, as I have said before, an examination as to each transaction represented by the checks in view of [120] the fact they all are not accounted for at this time.

Mr. Coughlan: Your Honor, I am not asking for anything of that type.

(Testimony of Frederick Donhauser.)

Q. (By Mr. Coughlan): Mr. Donhauser, referring to your memory concerning the number of checks that you purport to have left with me, do you have any recollection as to how many checks were left?

A. I'd say, oh, between 10 and 20 or 15 and 20. I don't know. There were a number of them, I think.

Q. You have no clear recollection as to the exact number, is that correct? A. No, I don't.

Q. Now, in respect to what was formerly Identification 8, the checks that you previously examined, which I believe have now been entered into evidence as an exhibit—what is that exhibit, please?

The Clerk: X.

Q. In respect to Petitioner's Exhibit X you stated that you do not know if you wrote any portion of those checks?

A. The photostatic copies there?

Q. Yes, that is what I am referring to—no, I am referring to what was Identification 8 while you were under examination by the Petitioner and which is now Exhibit X.

A. It appears to be my signature.

Q. Have you examined all of them? [121]

A. The signatures look similar. I doubt if I could have written them because I wasn't here—I mean, some of them.

The Court: How many do you have there?

A. I have 5 here, and 4 here.

(Testimony of Frederick Donhauser.)

Q. Do you recall any other bills that were payable by this Estate that you do not have checks for at the moment?

A. No, because I don't know what all these checks are for.

Q. In respect to the signatures on Petitioner's Exhibit X, you say they look similar to your signature?

A. They all appear to be, yes.

Q. Is there anything about them that makes it appear that they are not your signature or makes you doubt but what they are your signature?

A. I don't think so.

Q. Referring to Exhibit F, which is a Lomen Commercial Company check, and the testimony that you gave in respect to that, were you in Fairbanks at the time that the request was received for the purchase of that particular vehicle?

A. The purchase from Lomen?

Q. Yes, were you in town at the time a letter was received in respect to that?

A. I believe so. I don't know the date, but I think I remember you mentioning something about it.

Q. During the summer of 1951 and into approximately October or the first of November do you recall where you were employed? [122]

A. Yes.

Q. Where were you employed at that time?

A. Ralph Dodson.

Q. Was that located in the town of Fairbanks?

A. No, he had a pit about 3 miles outside of town.

(Testimony of Frederick Donhauser.)

Q. In respect to the exhibits that you identified, that were referred to you concerning the Raymond Silver Estate, do you have any independent recollection concerning the date that they were first seen by you? A. For which year?

Q. Well, during any of the years?

A. Yes, when you first started it. Then I think in May because that is when the sale of the truck was. That is when I spoke to your secretary about it.

Q. Referring to page 3 of Petitioner's Exhibit K, paragraph 6, do you notice a portion that states "voucher number"? Do you recognize the items that appear there? A. Yes.

Q. Do you recognize them as being connected with the Raymond Silver Estate? A. Yes.

Q. Now, referring to page 4 of the same exhibit, in paragraph 14, do you notice another set of figures? A. Yes.

Q. Do you recognize the figures and what they refer to? [123]

A. Well, I assume it is all for the Estate, yes.

Q. Now, do you recall that as being a portion of the Estate? A. Well, yes.

Q. Now, in respect to Petitioner's Exhibit M. Do you recall whether or not you were in the Territory of Alaska November 1st, 1955?

A. I am not sure if I was or not.

Q. Referring to Petitioner's Exhibit L. I will ask you whether you were in Fairbanks on November 1st, 1951?

(Testimony of Frederick Donhauser.)

A. Well, I don't know. I never saw these before.

Q. Do you recall the transaction?

A. No, I don't recall the transaction.

Q. You don't recall it?

A. No, that was the thing when I came back. That is when it first came up. When I asked your secretary she said she was going to write the note.

Q. Bearing in mind the Order and Approval of Sale, which are Petitioner's Exhibits M and L, and the time that they were made and filed, do you recall whether other portions of the Estate had been taken care of by you personally at that time?

A. Well, how do you mean personally?

Q. What I am referring to there is: You state that you do not recall that Order and Approval of Sale on those particular dates. Now, prior to that time, and if I understood your former [124] testimony correctly, you stated that you gave me permission to sell the truck; that there had been a discussion between you and myself concerning the sale of that particular truck?

A. After coming back from Nome, yes.

Q. Yes. Now, in respect to that and in order to orient you in the Estate matters, do you recall that our discussion at that time concerned the inventory price of the truck?

A. No, because I thought that was when I came back. I went to Lomen and that was the price, \$950.00.

Q. Yes.

A. But I think it was in May of '51.

(Testimony of Frederick Donhauser.)

Q. Then at that time or shortly after that trip that you made do you recall the inventory being filed or while you were there at Nome do you recall talking to a Mr. Polette concerning the truck and other properties there?

A. I recall, yes. I talked to him, yes, but I don't remember if it was——

Q. Was Mr. Polette one of the appraisers of the Estate? A. No. No, it was his father.

Q. That was Antonio Polette?

A. The old man; the father.

Q. Yes, Antonio Polette. Is that not what one of the checks was for that you noted here; that you recalled here? A. Yes.

Q. Antonio Polette, Alvin Polette and Martin Shafer? [125] A. Uh-huh.

Q. Now, as I understand it, you testified to the Petitioner that you engaged my services to obtain the administration of this particular Estate; that you then had occasion to leave town after you had completed a certain portion of the administrator's duties and that you left a certain number of checks here with me. Is that not correct?

A. That was in October of '51.

Q. In October of '51?

A. Well, are you talking about October or May?

Q. I am talking about May at the present time.

A. Yes, that is right.

Q. And how many checks would be accounted for in this number here? A. 9.

Q. 9 checks. How many would be accounted for

(Testimony of Frederick Donhauser.)

in this number here? A. 4.

Q. That would mean 13 checks accounted for, is that correct? A. Yes.

Q. Mr. Donhauser, the voucher numbers shows this account that you have been referring to——

A. I never saw that final accounting until in August of '52, or I think it was after that.

Q. But you recall the matters in there from the prior [126] transactions to that, do you not? Do you not recall, for instance, the probate fees?

The Court: Well, I think there is no materiality to the items that are mentioned in the accounting. The only reason that evidence was introduced, as it appears to me, is the connection of his testimony as it appears right now, and there is nothing about the final accounting until later.

Q. Do you recall how many checks you, yourself, received from the Estate?

A. I don't recall the number. It was about \$330.00 I think, that I received from the Estate.

Q. Do you recall whether it was in more than one check?

The Court: How is that material now?

Mr. Coughlan: Beg your pardon?

The Court: How is that material?

Mr. Coughlan: I am referring to the number of blank checks, your Honor, that he stated that he left. He has already accounted for 13 checks.

The Court: Well, this is getting too remote now. Don't answer the question. Go to something else.

(Testimony of Frederick Donhauser.)

Q. Now, you stated that you gave me a Power of Attorney? A. Yes.

Q. Was it necessary to write blank checks for me after you had given me a Power of Attorney?

A. I don't know. [127]

Q. Have you ever heard of my having used a Power of Attorney to do any transactions, any business in your behalf? A. No.

Mr. Coughlan: That is all.

Mr. Stevens: Just one minute.

FREDERICK DONHAUSER

testified as follows on

Redirect Examination

By Mr. Stevens:

Q. You stated that you gave Jack the right to sell the truck? A. Yes.

Q. This is Petitioner's Exhibit T, which is the petition to sell the truck and is signed by C. P. Coughlan, attorney in fact. Did you tell him to go ahead and get permission to sell the truck or did you tell him to go ahead and sell the truck or what did you tell him?

A. I don't remember. I mean, I thought I told him to go ahead and sell it.

Q. Did you understand that a petition had to be made to the court to sell it?

A. This is the first time I have ever seen this piece of paper here, and lots of others, and it wasn't a G.M.C., it was a Cornbinder. I never saw this. [128]

(Testimony of Frederick Donhauser.)

Q. But you had given Mr. Coughlan Power of Attorney to use in connection with the Estate?

A. Correct.

Mr. Stevens: Your witness, Mr. Coughlan.

Recross-Examination

By Mr. Coughlan:

Q. With respect to this Exhibit T; after you retained my services in connection with this Estate did you have occasion to come to my office at different times to examine the Estate file?

A. Yes, I did.

Q. Did you examine the Estate files at those times?

A. Sometimes I did and sometimes I didn't.

Q. Do you recall having examined the Estate files on or near the time that this sale took place?

A. No, I don't—I might have done it, but I don't remember it.

Q. You have no independent recollection of examining the files at that time?

A. Not at that particular time, no. I do know the last time I saw you I didn't before I went out.

Q. Beg your pardon?

A. The last time I saw you in '51 I did not examine them. [129]

Q. You did not examine the Estate files at that time? A. That is right.

Q. Do you recall when, prior to that?

A. No, I don't recall.

(Testimony of Frederick Donhauser.)

Q. Did you examine the Estate files after the date of that sale? A. When I came back, yes.

Q. Did you note that the files disclosed the sale?

A. There was—I don't know when I came up in '52 and saw that the truck had been sold and that there were no funds. That is when I asked your secretary where the check was and I didn't see you after that. You weren't there.

Q. Yes, but you examined them at that time?

A. In '52, yes.

Q. And you examined them in my office?

A. Yes.

Q. And did you notice from the file then at that time, if I understand your testimony correctly, that the sale of the truck had been accomplished?

A. The sale had been, yes.

Q. And it had been accomplished according to these papers?

A. I don't recall seeing those papers. It was through some correspondence in the file that indicated that the truck had been sold, but it wasn't those particular papers.

Q. It showed up clearly in the file? [130]

A. That the truck had been sold, yes.

Q. And when was it that you examined it?

A. I think it was either in April or May. I don't remember.

Mr. Coughlan: That is all.

Mr. Stevens: Thank you, Mr. Donhauser.

(Thereupon, the witness was excused and left the stand.)

Mr. Stevens: Mr. Hufford.

ERNEST M. HUFFORD

a witness called in behalf of the petitioner, was duly sworn and testified as follows:

Direct Examination

By Mr. Stevens:

Q. Would you state your name, please?

A. Ernest M. Hufford.

Q. Where do you live? A. 314 Cushman.

Q. And what is your business?

A. Banking.

Q. In what respect; which bank?

A. First National.

Q. What is your position at the bank?

A. Assistant Cashier.

Q. What are your duties as Assistant Cashier in relation to the records of the First National [131] Bank?

A. I have access to all records.

Q. I hand you Petitioner's Identification No. 24 and would you tell us what that is, please?

A. It is a copy of our original account of Cornelius P. Coughlan and shows entries of deposits and disbursements.

Q. And is that a record kept in the normal course of business in your bank? A. It is.

Q. And it is in the normal course of business to keep such a record in your bank?

A. That is true, yes.

(Testimony of Ernest M. Hufford.)

Q. I hand you Government's Identification I, which is a photostat of a copy of a check. By examining that exhibit, Mr. Hufford, can you tell from the reverse side of the check whether or not the check was ever passed through your bank?

A. It has April 4 of '52. It went through our bank, yes, sir, if I read this correctly. It bears our endorsement.

Mr. Coughlan: I can't hear the witness, your Honor.

A. It bears our endorsement of April 4, 1952.

Q. And is that what is known as a cash endorsement or what type of endorsement is it?

A. It is a check stamp endorsement.

Q. Would you examine the Identification that you previously had, 24, and tell us whether or not you can locate the transaction involving Exhibit I with Identification 24? [132]

A. It shows it was deposited to this account.

Q. There was a check in a similar amount deposited to the account of Cornelius P. Coughlan on that date in your bank?

A. That is correct.

Q. I hand you Government's Exhibit H and ask you to examine the reverse of that.

A. I can't quite make out the month; it is 14—it is too dim for me. It is our endorsement, but I can't make out the month.

Mr. Coughlan: I can't hear what the witness is saying, your Honor.

The Court: You will have to speak louder.

A. I can't make out the month on this document.

(Testimony of Ernest M. Hufford.)

Q. The check, on the face of it purports to be made out on 1/12/52 and the stamp on the reverse side is on the 14th of some month?

A. That is true.

Q. Is it your bank?

A. It is our bank stamp, yes, sir.

Q. A clearance endorsement, is it not?

A. Same thing.

Q. I hand you Government's Identification 13 and call your attention specifically to January 14, 1952. Would you tell us whether there is an entry there which would correspond to a similar check as Government's Exhibit H? [133]

A. There is, yes, sir.

Q. And a check in the amount of \$1,000.00 did pass through the account?

A. A check of \$1,000.00 has.

Q. Deposited to——

A. Cornelius P. Coughlan.

Mr. Stevens: Your witness, Mr. Coughlan.

ERNEST M. HUFFORD

testified as follows on

Cross-Examination

By Mr. Coughlan:

Q. Now, Mr. Hufford, referring to Petitioner's Identification 24, would you state whether that is the full account?

The Court: It doesn't make any difference if it

(Testimony of Ernest M. Hufford.)

was the full account or not. It was admitted for the purpose of showing these 2 checks. What the rest of the account may show is immaterial as far as this witness is concerned.

Q. Would you state whether or not, in your examination of your ledgers, whether there was more than one account or different accounts for Cornelius P. Coughlan at the same time?

The Court: Never mind answering that question. That comes within the scope of the last ruling. This witness was called for the purpose of testifying to 2 checks in connection with the Exhibit for Identification 24 which shows that part of [134] the account that sets forth these 2 checks. Your cross-examination is limited to those 2 checks in the account.

Q. Now, referring to Petitioner's Exhibit H, did you state that there appears to be on Petitioner's Identification 24 a ledger marking that same date or approximately the same date?

A. January 14 we have it, yes, sir.

Q. January 14. From your examination of Petitioner's Identification 10 are you able to ascertain whether that endorsement was made in the month of January of that particular year?

A. Well, this just isn't too clear here, but by the date of January 12 you naturally think it wouldn't be more than 2 days in a local bank transaction. It would be in line.

Q. Would it be stamped on the same day?

A. We stamp it the same day we receive it.

(Testimony of Ernest M. Hufford.)

Q. From your examination of Petitioner's Exhibit H can you see on your endorsement the month?

A. No, I can't.

Q. Referring to Petitioner's Exhibit I can you ascertain whether or not any mark appears on the face of it that would indicate that cash had been paid for it?

A. If it had been in cash it would have been stamped with a "cage" stamp. This would have been deposited.

Q. And is that a cage stamp you are referring to? Is that like the little mark that appears on Petitioner's Exhibit F?

A. That is true, yes, sir. It doesn't appear on this one. [135]

Q. Referring to that particular reproduction, if there were such a stamp on it, particularly referring to the reverse side of it where you see a stamp impression from your bank, do you think a hand stamp might possibly have been on there and is not visible at the present time?

A. I don't think so.

Q. Is there any indication on either of these exhibits that would show to whom the transaction took place, that is, Petitioner's Exhibits H and I? Is there any indication on the records that would indicate that any particular teller or member of the bank handled the transaction?

A. I don't have that record with me. There would be, yes.

Q. But none appears?

A. None appears on the check, no, sir.

(Testimony of Ernest M. Hufford.)

Mr. Coughlan: That is all.

Mr. Stevens: We move the admission of Identification No. 24.

Mr. Coughlan: Objected to, Your Honor, as incompetent and irrelevant.

The Court: Objection overruled. It may be admitted.

The Clerk: Petitioner's Exhibit Y.

(Account of Cornelius P. Coughlan with the First National Bank was marked Petitioner's Exhibit Y.)

Mr. Stevens: Thank you, Mr. Hufford. [136]

(Thereupon, the witness was excused and left the stand.)

Mr. Stevens: Your Honor, we were not aware that these deposit slips Mr. Hufford mentioned to Mr. Coughlan may be available and he has stated he will attempt to find them during the noon hour and call my office.

The Court: But why is it material to produce these deposit slips?

Mr. Stevens: I believe it would be material, Your Honor, because the back of the one check does not state clearly it was January. It shows the date 12/52, but it does not show the month. If we can locate that slip to show it was January 12.

The Court: I have another question. Are these particular checks going to be disputed?

Mr. Coughlan: Yes, Your Honor.

The Court: Very well. Then you may bring in this other evidence to which you refer.

Mr. Stevens: Your Honor, we have the deposition of Clarence E. Bowen, taken in Washington, D. C., and the deposition is before the court. I am not familiar with the way the court wishes to have depositions presented. The deposition was taken on written interrogatories presented by myself and cross-interrogatories presented by Mr. Coughlan.

The Court: I have read the deposition so all you need to do is offer it in evidence.

Mr. Stevens: We do offer it. [137]

Mr. Coughlan: I am going to object for the reason the rules and procedure have not been complied with in the making and introducing of that evidence.

The Court: Objection overruled. It may be admitted.

The Clerk: Petitioner's Exhibit Z.

(Deposition of Clarence E. Bowen was marked Petitioner's Exhibit Z.)

Mr. Stevens: Your Honor, we would like time to allow Mr. Hufford time to search for that one slip.

The Court: You have no other evidence to put on at this time?

Mr. Stevens: That finishes the Government's evidence. I am sorry we over-estimated our case.

The Court: Well, we will recess to 1:30.

(Whereupon, at 11:45 o'clock a.m., court continues the cause to 1:30 o'clock p.m. of the same day.)

(At 1:30 o'clock p.m., counsel for petitioner being present and counsel for the respondent being present, the trial of said cause was resumed.)

Mr. Stevens: Mr. Hufford. [138]

ERNEST M. HUFFORD

a witness recalled in behalf of the petitioner, and having previously been duly sworn, testified as follows:

The Clerk: Petitioner's Identifications Nos. 25 and 26.

Mr. Stevens: These are 2 documents you have never seen, Mr. Coughlan. Would you like to see them?

(The documents were handed to Mr. Coughlan.)

Direct Examination

By Mr. Stevens:

Q. Mr. Hufford, I hand you Identification 25 and rehand you Petitioner's Identification 24. Now, would you tell us what 25 is?

A. 25 is a deposit made by C. R. Coughlan for \$1,000.00.

Q. Could that be C. P.? A. C. P., yes.

Q. And what is the date that appears thereon?

A. It shows January 12, 1952.

Q. And can you ascertain from that what type of transaction was involved, whether it was cash or check?

A. It is listed here as a check.

(Testimony of Ernest M. Hufford.)

Q. Is this Identification 25 a record which would be kept in the normal course of your business in connection with the depositors account?

A. That is true.

Q. I hand you Petitioner's Identification 26 and ask you [139] to state what that is, please?

A. It is a deposit, this time written out Cornelius P. Coughlan, on April 4, for \$1,000.00, listed as a check, page 9. 7 that one is. The other one is 9.

Q. And is Identification 26 a record kept in the normal course of your business as a banking institution? A. It is.

Q. And is it your normal course of procedure in your business to keep records such as 25 and 26?

A. We are required to by law.

Q. And you have had those preserved in your bank until you produced them here today?

A. Correct.

Q. Now, can you connect these 2 transactions, 25 and 26, with the entries on Identification 24?

A. 25 is 2 days different, but it could have been at a late hour or on a Saturday, and the other one is identical, the same date.

Q. And what is that date, on the second one?

A. April 4 and corresponding deposit April 4.

Q. And the entry on January 14, 1952, is 2 days off of the—— A. Deposit ticket.

Q. ——deposit ticket and the check, which is Exhibit H, is that correct? [140]

A. That is right, yes, sir.

Q. Mr. Hufford, if January 12, 1952, fell on a

(Testimony of Ernest M. Hufford.)

Saturday, would the normal course of your procedure be to enter the transaction on the records on Monday?

A. It should still bear the date of Saturday, but sometimes they mess up on dates.

Q. Then it could have happened that it would be entered on the 14th, which is the following Monday?

A. That is right.

Mr. Stevens: We offer the 2 deposit slips in evidence as business records of the First National Bank of Fairbanks.

The Court: They may be admitted.

The Clerk: Petitioner's Identification 25 is Petitioner's Exhibit AA and 26 is BB.

(2 deposit slips of the First National Bank of Fairbanks was marked as Petitioner's Exhibits AA and BB.)

Mr. Coughlan: I will object to them, your Honor, on the ground that they are irrelevant and incompetent in this action.

Mr. Stevens: Your witness, Mr. Coughlan.

ERNEST M. HUFFORD

testified as follows on [141]

Cross-Examination

By Mr. Coughlan:

Q. Mr. Hufford, did you state that one of those deposit slips indicated that it was placed with the bank on a Saturday?

A. I didn't mention Saturday, no, sir.

(Testimony of Ernest M. Hufford.)

Mr. Stevens: You misunderstood, Mr. Coughlan. I looked at the court's calendar for 1952 and ascertained the 12th was a Saturday, then phrased my question to Mr. Hufford.

Mr. Coughlan: That doesn't show in the record, does it, otherwise?

Q. (By Mr. Coughlan): Did you not answer that a particular date fell on a Saturday in 1952, namely, the 12th day of January or the 4th day of April?

A. I didn't check that, no, sir.

Q. But you have noticed a difference in the dates? A. True.

Q. Referring to Petitioner's Exhibits AA and BB you note where both deposits are to the credit of the same account?

A. Well, one is the initials C. P. and the other one is spelled out Cornelius P. Coughlan.

Q. While you were checking the accounts for these particular papers did you note whether or not there were 2 separate accounts, one for C. P. Coughlan and another with your bank for Cornelius P. Coughlan and another office account as Cornelius P. Coughlan?

A. I did not, but it would go to the same account. [142]

Q. Even though within your bank there would be 2 different accounts kept under 2 different names?

The Court: There is no use in asking these questions.

(Testimony of Ernest M. Hufford.)

Mr. Coughlan: Your Honor, there has been some reference made to the transcript in 1651 Criminal

The Court: Whether or not 2 accounts were maintained does not depend upon any transcript. Now, if there is——

Mr. Coughlan: Yes, Your Honor, there was more than 2 accounts maintained in that bank by myself at that time.

The Court: Well, if there is 2 accounts or more kept, of course, the question would be proper, but otherwise there is no use in speculating on what would be done if there were more.

Mr. Coughlan: No, I was not making this a hypothetical situation, Your Honor.

The Court: Go ahead.

Q. (By Mr. Coughlan): In respect to Petitioner's Exhibit AA, do you note whether there is a date on it? A. I find the date January 12, 1952.

Q. And is that written in?

A. It is stamped in with a cage stamp. That might not have been changed. I don't know.

Q. Beg your pardon?

A. Sometimes the tellers forget to change their date stamp. This could have been an earlier transaction and it shows [143] the 12th, but the entry on the ledger sheet shows the 14th.

Q. Normally if they were for the same transaction would they show on the deposit slip and the account ledger of the account as the same date?

A. They should, yes, sir.

Q. Referring to Petitioner's Exhibit AA. From

(Testimony of Ernest M. Hufford.)

your experience is that the same stamp or the same type of stamp that the bank ordinarily utilizes?

A. You mean teller's stamp?

Q. Yes. A. It is.

Q. What is the name of the account that appears on Petitioner's Exhibit——

The Court: It speaks for itself, so you don't have to ask him to repeat something——

Mr. Stevens: It is on the bench, Mr. Coughlan.

Mr. Coughlan: ——Y.

The Court: I said, the exhibit speaks for itself so it is unnecessary to ask that question.

Mr. Coughlan: I was just referring to it for the record.

Q. (By Mr. Coughlan): What is the name of that particular account that appears on the ledger?

A. Cornelius P. Coughlan. [144]

The Court: That is just the question that I said not to ask him. It speaks for itself and I don't want the time of the court taken up this way. The only question here is whether you were credited and whether it was in the name of one account or 2 or 3 doesn't make any difference.

Q. Now, Mr. Hufford, your testimony concerning these particular matters is not from personal knowledge, is it? You are merely stating that they are records of the bank, is that not correct?

A. Yes, sir.

Mr. Coughlan: That is all.

Mr. Stevens: Thank you, Mr. Hufford.

(Thereupon, the witness was excused and left the stand.)

Mr. Stevens: We have nothing further, Your Honor, as far as the Petitioner's position is concerned.

The Court: You may proceed with the defense.

Mr. Coughlan: Call Mr. Byers.

ROBERT D. BYERS

a witness called in behalf of the respondent, was duly sworn and testified as follows:

Direct Examination

By Mr. Coughlan:

Q. Would you state your full name, please?

A. Robert D. Byers. [145]

Q. How long have you resided in the Territory of Alaska, Mr. Byers? A. 16 years.

Q. What was your occupation during the month of April, 1952?

A. Operating Certificated Air Service in Fairbanks to Tanana, Nenana and Rampart, Hot Springs.

Q. Recalling the month of April, 1952—strike that. Have you ever seen me before? A. Yes.

Q. Do you recall whether or not you had seen me during the month of April, 1952?

A. During that month—I think it was in April—it was during the Nenana Jaycee's convention you flew to Nenana with me to this convention.

(Testimony of Robert D. Byers.)

Q. Do you recall whether there was anyone else flying there at the time?

A. I carried several people down to the same convention.

Q. Do you recall whether or not I arrived there on the day of the convention; on the day that the convention started?

A. I don't remember whether it was the day it started or the day before, but I took you down and a couple of other fellows and the next day I took another load of people down and stayed overnight.

Q. I can't hear you, sir.

A. I took you and a couple of other fellows to Nenana one [146] day, I don't remember whether it was the day it started or the day before it started. and the next day I took another load of people to Nenana and stayed overnight and brought another load back.

Q. Do you recall offhand how long that convention lasted?

A. No, I don't. I think it was 3 days.

Q. Do you recall whether a person by the name of Jowel Buffington flew down in the same plane with me?

The Court: What has all this got to do with this case?

Mr. Coughlan: Your Honor, in respect to the date that the checks were alleged to have been——

The Court: You want to prove you were somewhere else?

Mr. Coughlan: That is correct.

(Testimony of Robert D. Byers.)

The Court: Prove it without going into all these details. He says you were in Nenana that day. That is enough.

Q. With respect to the convention that you have been testifying concerning, did you fly me back to Fairbanks after the convention?

A. Could I counter that, your Honor, with another question to refresh my memory?

The Court: Yes.

A. Did you come back with Bob Reeves?

Q. No, I came back with you, is what I was referring to, but I don't know who the persons were in the plane.

A. I don't remember then. I remember bringing 5 people back and among them was Bob Reeves, president of the National [147] Jaycee's. I can't recall, Jack, whether you were with us or not.

Q. And when was that that you flew that plane load back in respect to the beginning or end of the convention?

A. It was the day after they held their banquet. It was the last day of the convention. The convention was adjourned at midnight the night before we came back.

Q. I understand your testimony to be that you don't recall the date of the convention?

A. No, I don't remember the exact date.

Q. Have you had an opportunity to check your flight log for that time in order to ascertain the date of the ticket?

A. No, I haven't had a chance to check them.

(Testimony of Robert D. Byers.)

Q. Would that be available to you if you had had time to do so?

A. I think I could locate it, yes.

Mr. Coughlan: That is all.

ROBERT D. BYERS

testified as follows on

Cross-Examination

By Mr. Stevens:

Q. Do you recall what day the convention started down there?

A. No, I don't know the exact day.

Q. Do you know whether or not the people you flew down there went down on the first day of the convention? [148]

A. I don't remember whether they went down on the first day or the day before the convention started. It seems to me they went down on the day the convention opened.

Q. What time did you leave Fairbanks, if you recall?

A. I don't remember that now. I think it was in the forenoon sometime.

Q. Did you leave before 10:00 o'clock?

A. I don't remember exactly. To the best of my recollection it was about 10:00 o'clock.

Q. But you don't recall whether it was the first or the 10th of April? A. No, I don't.

Mr. Stevens: No further questions.

ROBERT D. BYERS

testified as follows on

Redirect Examination

By Mr. Coughlan:

Q. But you do recall it was the Junior Chamber of Commerce All-Alaska Convention?

A. That is right. That was the purpose of the flight.

Q. And do you recall, in respect to the time schedule and my flying with you, whether or not that was not during the early morning when we flew down there?

A. I don't remember exactly on that, no. [149]

Q. You stated that you have a certificated airlines? A. C.A.B. certificated, yes.

Q. Did you have a regular schedule at that time, that is, April, 1952, when you took off for Nenana from Fairbanks?

A. Those flights were made on a charter basis which do not have a time schedule.

Q. During the first part of April, 1952, when you were on a schedule basis, what time did you leave?

The Court: This is no longer redirect examination. He asked the witness only whether he recalled what day a convention started.

Mr. Coughlan: Your Honor, he asked him in regard to the time element—what time, if he recalled; whether it was noon or whether it was after 10:00 o'clock in the morning, on cross-examination.

(Testimony of Robert D. Byers.)

The Court: And he couldn't remember the day, so the redirect examination is limited to his recollection of the day.

Mr. Coughlan: I understand that, Your Honor, but he asked him questions——

The Court: I have ruled. I don't want to hear any argument on it.

Mr. Coughlan: That is all.

Mr. Stevens: Thank you, Mr. Byers.

(Thereupon, the witness was excused and left the stand.)

Mr. Coughlan: Call George Sullivan or Cyril Randell, [150] whichever one might be there.

CYRIL RANDELL

a witness called in behalf of the respondent, was duly sworn and testified as follows:

Direct Examination

By Mr. Coughlan:

Q. Would you state your full name, please?

A. Cyril Randell.

Q. How long have you been in the Territory of Alaska, Mr. Randell?

A. Oh, about 18 years.

Q. Were you in the Territory of Alaska in April of 1952?

A. I was.

Q. What was your occupation at that time?

A. Office manager for the N. C. Company.

Q. As office manager for the N. C. Company, did you have occasion at any time to see Respondent's

(Testimony of Cyril Randell.)

Identification C? A. Yes, I have seen this.

Q. Was that kept in the regular course of business? A. Yes.

Q. And what is it?

A. Well, it is a transmittal list of checks coming to Fairbanks from the outlying branches.

Q. Does that record purport to show checks coming from a [151] particular branch?

A. Yes, it is.

Q. What branch? A. From Nenana.

Q. And does it bear a date?

A. Yes, it does.

Q. Referring to the record, Respondent's Identification C, can you state whether or not the name Cornelius P. Coughlan appears thereon?

A. Yes, it does, Jack Coughlan.

Q. And what date appears thereon?

A. You mean the date this was made out?

Q. No, the date adjacent to the name Jack Coughlan?

A. April 4. There are 2 checks on here; April 4 on both of them.

Q. What does that indicate?

A. Well, it indicates the date on the check was April 4. It was transmitted to us on April 10 from Nenana.

Q. And does that indicate that a check was given or cashed with the N. C. Company at Nenana, Alaska, on that date, the 4th day of April, 1952?

A. Well, it wouldn't necessarily be that date that it was cashed. That is the date on the check, but it

(Testimony of Cyril Randell.)

wouldn't necessarily have been the date on which we accepted the check in Nenana.

Q. Do you recall any further particulars concerning that [152] check?

A. Quite a few.

Q. Do you recall, concerning that particular check or those checks noted thereon, whether or not a person listed there as Jack Coughlan was in Nenana, Alaska, on the 4th day of April, 1952?

A. Well, I know Jack Coughlan was down there around that time.

Mr. Coughlan: That is all.

Cross-Examination

By Mr. Stevens:

Q. Does that identification show the bank upon which the check was drawn?

A. No, it does not.

Q. Do you know of your own knowledge what bank the check was drawn on? A. Yes, I do.

Q. What bank was it?

A. First National Bank of Fairbanks.

Q. Did you receive payment for the check?

A. I am referring specifically now to this \$100.00.

Q. Yes, sir. [153] A. Yes, we did.

Q. Did it clear the bank in the normal course of business? A. No, it did not.

Q. And what happened? When did you get the payment for the check?

A. It was quite some time afterwards. It was returned to us by the bank marked N.S.F.

(Testimony of Cyril Randell.)

Q. And you have listed here only the date of the check itself? A. That is right.

Mr. Stevens: No further questions.

Redirect Examination

By Mr. Coughlan:

Q. Then, Mr. Randell, the check that was placed through the Northern Commercial store at Nenana, purportedly on the 4th, did not clear the bank here, is that correct?

A. It cleared the bank in time. It did not clear immediately.

Q. Now, you mean in the normal course——

A. That is right, it did not.

Mr. Coughlan: That is all.

Mr. Stevens: No further questions. Thank [154] you, Mr. Randell.

(Thereupon, the witness was excused and left the stand.)

Mr. Coughlan: George Sullivan.

(The witness, George Sullivan, was not present.)

Mr. Coughlan: I will take the stand at this time, Your Honor.

CORNELIUS P. COUGHLAN

a witness called in behalf of the respondent, being the respondent, and having previously been duly sworn, testified as follows:

Mr. Coughlan: Your Honor, may I remove myself from the stand and allow Mr. Sullivan to testify, who was not here a moment ago?

The Court: Yes.

GEORGE MURRAY SULLIVAN

a witness called in behalf of the respondent, was duly sworn and testified as follows:

Direct Examination

By Mr. Coughlan:

Q. Would you state your full name, please?

A. George Murray Sullivan.

Q. How long have you resided in the Territory of Alaska, Mr. Sullivan? [155]

A. 33 years the end of the month.

Q. Where were you residing during the month of April, 1952? A. Nenana, Alaska.

Q. What was your occupation at that time?

A. Deputy United States Marshal.

Q. Recalling the first part of April, 1952, were you associated with the Junior Chamber of Commerce? A. I was.

Q. Would you state whether the Junior Chamber of Commerce was interested in any particular affair or event at Nenana, Alaska, at that time?

A. They were.

(Testimony of George Murray Sullivan.)

Q. Were you involved with that affair that they had at Nenana at that time? A. Yes, I was.

Q. What was your connection with the Jaycee's matter there?

A. I was president for Alaska of the Junior Chamber of Commerce at that time. We held our convention there.

Q. Do you recall the dates of that convention?

A. No, I don't.

Q. Do you recall whether or not I was in Nenana, Alaska, at the time of that convention?

A. Yes, you were. [156]

Q. Do you recall whether or not I was in Nenana, Alaska, at that convention the day prior to the main body coming to the convention?

A. I don't recall. I know you were there, but I don't recall now whether you were there the day before or not.

Q. Do you have any recollection whatsoever of the date of that convention?

The Court: He has already said he didn't.

Mr. Coughlan: I beg your pardon.

The Court: He has already said he didn't.

Q. Refreshing your recollection, was it on the 3rd, 4th and 5th of April, 1952?

A. I couldn't definitely remember that long. I don't remember.

Q. Is there any method by which you could ascertain that fact within a reasonably short time?

A. Yes, I could go to the Marshal's office and find out when I was given the voucher to go down

(Testimony of George Murray Sullivan.)

to the Healy River coal strike. That was the second day of the convention.

Q. Would that take a very few moments to do?

A. I don't know what their files are like. It shouldn't—

Mr. Stevens: Your Honor, I believe that the record before the court shows on page 539 that this witness was on the stand at the criminal proceeding and stated that as he recalled it at that time the date was the 5th and 6th of April, and [157] at that time he said that it was a Friday, Saturday and Sunday, the first week end in April, 1952. It is already a matter of record in this proceeding.

Q. You would be able to ascertain that date within a short time; that particular date?

A. Well, if their records are available I would be able to.

Mr. Coughlan: That is all. I would like to be able to recall this witness.

The Court: Why didn't you arrange for him to verify the dates before you called him?

Mr. Coughlan: Your Honor, because of the time consumed in the previous trial and commencing this action immediately afterwards I was not able to do so. Mr. Sullivan has been out of the Fairbanks area recently and I might, if the court pleases, ask him concerning that. I believe he just arrived back into town this morning.

The Court: But this case has been pending a long time. The court can't permit counsel to prepare their cases in the courtroom. You have got to

(Testimony of George Murray Sullivan.)

do that beforehand. Of course, if something arises that couldn't have been foreseen, that is different but here you are attempting to establish the fact that you were at Nenana on a certain date by this witness so you should have exhausted all means of ascertaining the time that this convention was held, either through this witness or some [158] other witness and not disrupting the proceedings to the extent of letting them leave the stand with the understanding of coming back on.

Mr. Coughlan: I beg your pardon, sir. I didn't hear the judge's last remark.

The Court: To the effect you should prepare your case outside the courtroom.

Mr. Coughlan: I understand that was the general statement.

Q. (By Mr. Coughlan): You state that a voucher was given to you by the United States Marshal's office on the 2nd day of the convention?

A. I don't recall whether a voucher was given to me or not, but there would be papers in there to substantiate when I made that trip to Healy for their coal strike which was on the Saturday during the convention.

Q. That was the Healy River Coal Mine?

A. Usibelli Coal Mine.

Mr. Coughlan: That is all.

GEORGE MURRAY SULLIVAN

testified as follows on

Cross-Examination

By Mr. Stevens:

Q. Do you have any independent recollection of this time, [159] the 4th of April, 1952?

A. Of the 4th day of April. You mean in regards to——

Q. In regards to the 4th day? Just do you remember the occurrences that took place on that day?

A. No, I don't.

Q. Do you recall what time you first saw Mr. Coughlan at the convention, the Jaycee's convention?

A. As I recall it was the banquet we had the first evening of the convention, which, I believe, was on a Friday.

Mr. Stevens: No further questions.

Redirect Examination

By Mr. Coughlan:

Q. Mr. Sullivan, with reference to the first time that you saw me in Nenana at the convention, did I not see you and a Mr. Anderson, and a Mr. Jowel Buffington, with whom I had arrived on the plane, at Flo's Lunch counter at lunch prior to the time of the banquet that you referred to, which was a fried chicken affair, where your wife had lost some silver in the garbage can?

A. I believe you did. I can't positively say. I

(Testimony of George Murray Sullivan.)

kind of recollect in my mind, when you mention that, now that we did talk in there. I remember Jowel coming down there early in the day. [160]

Q. And do you recall approximately what time Jowel got there?

A. I believe right during noon time.

Q. Do you recall whether or not I was there with Jowel?

A. I think you were, but I can't positively say that you were. I believe that you were.

Mr. Coughlan: That is all.

Mr. Stevens: No further questions.

(Thereupon, the witness was excused and left the stand.)

Mr. Coughlan: Ask Mr. Coughlan to take the stand, Your Honor.

The Clerk: Respondent's Identification Nos. D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S and T.

CORNELIUS P. COUGHLAN

a witness called in behalf of the respondent being the respondent, and having previously been duly sworn, testified as follows:

Direct Examination

By Mr. Coughlan:

Q. Mr. Coughlan, I request that you examine Respondent's Identification K, and state whether a signature appears thereon?

A. A signature appears thereon.

(Testimony of Cornelius P. Coughlan.)

Q. Do you recognize that signature?

A. I do. [161]

Q. Whose signature is it?

A. It is my own.

Q. And upon what date was that signature made?

A. It appears to have been made on the 2nd day of February, 1952.

Q. Mr. Coughlan, I ask you to examine Respondent's Identification L and state whether a signature appears thereon?

A. There appears to be a signature thereon.

Q. Whose signature is that, if you know?

A. It is my signature and was apparently made on the 31st day of March, 1952.

The Court: Is this for the purpose of offering into evidence specimens of Respondent's handwriting?

Mr. Coughlan: Yes, Your Honor, and I am going to compare it for a moment.

The Court: Were these made before there was any suspicion attached to you which furnished the basis for this?

Mr. Coughlan: Yes, I believe they were.

The Court: What is the Petitioner's viewpoint about that?

Mr. Stevens: Your Honor, I believe these documents and others were submitted to the Bureau of the Identification Division of the F.B.I., and the F.B.I. picked out certain of the exhibits we had given them and used them as known standards. All

(Testimony of Cornelius P. Coughlan.)

of these have gone into the F.B.I., and we have no objection [162] to them. They were made about the same time. They came out of the files here in the courtroom.

The Court: But it isn't apparent what the purpose now would be in offering these into evidence.

Mr. Coughlan: The purpose, Your Honor, is this: That Mr. Bowen, I believe to the interrogatories and cross-interrogatories appearing in Petitioner's Exhibit Z, has made reference to certain known and questioned signatures of C. P. Coughlan. Your Honor, at that time there was a multitude of signatures made on or about the time that the questioned documents were made that were obtained from the public records here in Fairbanks; ones that were made before any suspicion was brought concerning this case in any way whatsoever, but that Mr. Bowen saw fit to use others, entirely different samples of handwriting and——

The Court: I understand all that, but what is your purpose? What will be your purpose in offering these into evidence?

Mr. Coughlan: The purpose, Your Honor, is this: To state that these are my signatures. That the others are not my signatures, that Mr. Bowen used as known standards. That he rejected these, did not use them, did not make the comparison with these, even though they were sent to him as known standards. In other words, Your Honor, an expert witness cannot give competent evidence if he has not

(Testimony of Cornelius P. Coughlan.)

utilized the known standards that have been presented to him. [163]

The Court: Well, your position is that all he used were false signatures. Is that it?

Mr. Coughlan: My assertion is this: That it is apparent to anyone looking at these that they do not appear to be exactly or similar to the others that they have used or attempting to use as a standard at this time. He has rejected them. He has not mentioned them there and yet they were sent.

Mr. Stevens: I believe I would object to that statement, Your Honor. The Government sent to Mr. Bowen known handwriting standards. To start with those were standards from the very file involved—the file of the Estate of Raymond Silver; later, at Mr. Coughlan's request, we sent all of these items which he is now bringing in, in addition to the items we had previously sent Mr. Bowen. At the time we took the interrogatories of the F.B.I., as I have stated before, Mr. Bowen used the known handwriting samples that we had sent to him, the ones which were taken from the records of the Estate of Raymond Silver, and we brought in a couple of other examples, such as, check of Collins and Clasby and receipt of the bail money to show it was the same type of writing throughout a period from 1951 until 1954, the date of the comment on the back of the bail money receipt.

Mr. Coughlan: Your Honor, at the time the interrogatories were propounded the Respondent submitted cross-interrogatories specifically questioning

(Testimony of Cornelius P. Coughlan.)

the Government's handwriting specialist, Bowen, concerning these signatures. He failed to allow these [164] signatures to in any way affect his study. In other words, he just failed and completely refused to examine them even though they were accepted handwriting standards. He just didn't refer to them at all.

The Court: Who accepted them as handwriting standards?

Mr. Coughlan: I believe the United States Attorney and I went in and picked them out of the record together, didn't we?

Mr. Stevens: I went in with Mr. Coughlan and allowed him to pick them out of the record. These are not my selections, Your Honor.

The Court: Your purpose is to show there were others the handwriting expert could have considered in addition to the ones he did consider?

Mr. Coughlan: Not could have; should have.

The Court: Why?

Mr. Coughlan: Because these are taken from various and sundry cases in the public records, whereas, the so-called known standards that were submitted to him were taken from one place, namely, the very record that they were questioning the handwriting in and from dates that did not correspond to the dates of the checks that he was examining at the time. In other words, Your Honor, he is examining questioned writing. It would appear that he should not confine himself to examining the ques-

(Testimony of Cornelius P. Coughlan.)

tioned writing by writings contained within the same questioned file.

The Court: Your complaint is that he should have [165] considered these signatures?

Mr. Coughlan: Yes, that is one thing, Your Honor. I believe that I recognize my own signature and recognize the peculiarities of my own handwriting and am able to testify in that behalf.

The Court: You can introduce up to October 13, 1951, but other than that there is no burden resting on you to use all the signatures that anybody can possibly dig up. That is the ruling of the court. You can take what documents you have there that you testify are specimens of your handwriting, made without any efforts to alter or anything of that kind, and offer them into evidence and they will be admitted into evidence, but I am not going to listen to a long examination of yourself.

Mr. Coughlan: All right, Your Honor. I will offer the signatures on Respondent's Identification M, Respondent's Identification N, Respondent's Identification O, Respondent's Identification P.

The Court: Do they all antedate October 13, 1951?

Mr. Coughlan: No, I do not believe they do, Your Honor.

The Court: Then they are not within the ruling of the court.

Mr. Coughlan: Then I will object to the ruling of the court at this time concerning that aspect.

The Court: Proceed. [166]

(Testimony of Cornelius P. Coughlan.)

Q. (By Mr. Coughlan): Mr. Coughlan, I hand you Petitioner's Exhibit K and ask you to examine the same.

The Court: Does the Petitioner object to the Respondent testifying in narrative form?

Mr. Stevens: No, Your Honor. I believe that was the court's ruling yesterday.

The Court: I think to expedite the case you may testify in narrative form until there is some objection.

Mr. Coughlan: On page 2 of Petitioner's Exhibit K—or page 3, under paragraph 6, there appears certain words and figures as follows: (1) Probate Fees, \$30.00; (2) Jessen's Weekly "Notice to Creditors," \$10.00; (3) Fairbanks Insurance Agency, bond, \$55.00; (4) Frederick Donhauser——

The Court: That is an exhibit, as I understand it, so you need not recite the contents, but go ahead and say what you want to say.

Mr. Coughlan: ——which I recall to have been legitimate expenses of the Raymond Silver estate which Frederick Donhauser was administrator of.

The Court: Nobody is questioning that.

Mr. Coughlan: That each of the amounts thereafter represents a payment made in behalf of the estate. That Mr. Donhauser authorized each of the payments therein; that there were other and further payments made by check which should be in the probate file for the Silver estate, but which, apparently, [167] are not there at the present, which checks were, and another \$55.00 bond payment, or

(Testimony of Cornelius P. Coughlan.)

at least an extension payment of the bond of Frederick Donhauser which was for one year only and which was renewed. That there should appear 2 checks to Frederick Donhauser other than as shown on these particular voucher numbers.

The Court: Are any of these items questioned? Has anybody questioned them?

Mr. Coughlan: Your Honor, the purpose of this testimony at the present time is in respect to how many checks were issued out of this estate. Mr. Donhauser has testified that there were approximately 15 checks or 15 to 20 checks at that time. There has been no showing here, prior to this time, what has become of the checks that he stated that he signed. There hasn't been any testimony concerning that and it is my testimony and will be my testimony here that Mr. Donhauser did not in fact leave me any blank checks; that Mr. Donhauser did in fact sign checks in my office, but also at the same time placed in the person to whom it was to be paid, the amount of money to be paid and left only, to my recollection, the date of the check in blank.

The Court: Well, you can testify that he didn't leave you any checks signed in blank, but so far as these other items are concerned, the details relating to them I don't see how they could have any tendency to prove or disprove any issues of the [168] case.

Mr. Coughlan: Then I shall testify that Mr. Donhauser did not at any time leave me checks executed in blank; that he did leave me a number of

(Testimony of Cornelius P. Coughlan.)

checks to be paid to various persons for debts against the estate; that he wrote the names of the persons to whom the checks were to be paid on the check itself and if he left anything on the face of the check unwritten it was the date and I do not recall him writing checks at any particular time without the date being in it, but he may have done so. That in fact he left or made, in my office, a number of other checks against the account of the Silver estate do not show here.

The Court: Well, again you are going into the matters that I have just held are immaterial. There is no dispute about anything of that kind.

Mr. Coughlan: Your Honor, is it allowable to controvert the evidence presented by the Government on the defense?

The Court: What do you refer to now?

Mr. Coughlan: I am referring to the testimony of Mr. Donhauser that these were the checks that he could recall. The court would not allow me to question him this morning concerning any other checks.

The Court: Because he can't recall all the checks that were issued in the course of administering this estate does not make it a proper matter for this court in this case.

Mr. Coughlan: I understand that, Your Honor, but as far as the defense of this matter is concerned the administration [169] of the estate was administered with myself as attorney, is certainly relevant in this matter.

The Court: There is nothing in issue so far as

(Testimony of Cornelius P. Coughlan.)

the administration of that estate is concerned except what made the subject matter of these 4 counts. Nothing else, except as would tend to throw light on the charges of the 4 counts. We are not going to go into this final accounting, into all the contiguous items.

Mr. Coughlan: your Honor, this morning Mr. Donhauser testified that he left certain checks made in blank. I am merely trying to throw some light upon his testimony in respect to that one fact.

The Court: Well, you have already denied that he left any checks in blank.

Mr. Coughlan: Referring to Petitioner's Exhibit T and the purported signature of C. P. Coughlan, attorney in fact, that appears thereon, I wish to state that the "C" appearing in the word "Coughlan" does not resemble the method——

The Court: Do you deny the signature?

Mr. Coughlan: I have already denied it prior to this time.

The Court: You don't need to explain why you deny it if the District Attorney is satisfied with the explanation, but if the District Attorney wants to cross-examine you on what your denial is based on you may do so, but it is not part of your [170] case. You denied the signature and that is sufficient for all purposes so far as the defense is concerned.

Mr. Coughlan: Your Honor, the other day——

The Court: Well, I don't want to argue about it. I have ruled.

(Testimony of Cornelius P. Coughlan.)

Mr. Coughlan: And will that same ruling hold as to each and every signature appearing on the Government's exhibits?

The Court: Yes. I don't know how you can make a denial that can be any more absolute than the one that has been made here. If the District Attorney is dissatisfied with that denial, why, he can cross-examine you and if he cross-examines you then you can explain why it is not your signature.

Mr. Coughlan: Concerning Petitioner's Identification A, I wish to state or testify that the inventory in the Raymond Silver estate was filed shortly after the estate was established and Mr. Donhauser was made the administrator and that the inventory of said estate was filed at the time that an order to sell what is listed as a three-quarter ton G.M.C. pick-up truck was sold; that at that time the person who appears to have notarized the signature thereon "Joan R. Bullock" did not work for me; was not employed by me.

The Court: Whose signature now are you referring to?

Mr. Coughlan: I am referring to the one that appears to be——

The Court: But does it purport to be your signature? [171]

Mr. Coughlan: No, your Honor. I am merely referring to the fact that the person was not around my office at the time that this was supposed to have been signed, that is, the 15th day of May, 1951.

(Testimony of Cornelius P. Coughlan.)

The Court: At the time what was supposed to have been signed?

Mr. Coughlan: The signature that appears thereon.

The Court: On the inventory?

Mr. Coughlan: Yes, your Honor.

The Court: And that is for the purpose of bearing on what issue?

Mr. Coughlan: Bearing upon the issue of whether or not this estate file has been tampered with.

The Court: Well, what foundation is there for that issue?

Mr. Coughlan: Your Honor, Mrs. Nordale testified on the stand yesterday that an order for the court to order the sale of property an inventory must have been filed prior to that time. I have testified that in fact an inventory was filed shortly after the estate was placed in Mr. Donhauser's hands as administrator. That the inventory introduced here as part of that estate shows on its face not to have been received until a year later. That the person who has notarized it did not work for me or have anything to do with this estate whatsoever in 1951 as it is notarized there [172]

The Court: Why would the notary have to work for you in order to notarize any such document? You can go to any notary.

Mr. Coughlan: Your Honor, at the time that the inventory was made in this estate a person by the name of Ann St. John notarized the paper.

(Testimony of Cornelius P. Coughlan.)

The Court: I don't want to listen any discord of this kind. Now, as I understand it, you want to introduce this for the purpose of contradicting the Commissioner in her testimony in the respect that you have mentioned. Is that it?

Mr. Coughlan: That and to show by the record in this cause that the estate files in this case have obviously been tampered with, that they were not the proper source of known standards of handwriting of this Respondent; that the other documents that have been entered herein from that particular file, which this indicates has been tampered with, might also very well have been tampered with and in all probability have been tampered with. The signatures contained therein do not appear to be mine and do not resemble these other signatures and that the court has precluded the Respondent from any testimony concerning those facts and has further precluded the Respondent from cross-examining or examining any of the other witnesses concerning them.

The Court: I don't want to listen to this endless argument. What are you referring to? Now, there are 4 instruments that are made the basis of these counts against you and the [173] evidence must be confined to them, must bear on them. I am not interested in the fact that the United States Commissioner, according to your opinion, may not conduct her office in the way you think she should. We are not here to investigate that.

(Testimony of Cornelius P. Coughlan.)

Mr. Coughlan: Your Honor, it was not my contention that the United States Commissioner——

The Court: Your purpose for contradicting her in one instance——

Mr. Coughlan: Your Honor, I am limited then to the Government bringing in a portion of a record and then I am not able to give evidence on the whole record or the condition of the record.

The Court: It has to tend to establish your defense and so long as the evidence is confined to that, why, it will be allowed, but, otherwise, this lawsuit has got to end sometime. I am not going to permit it to be interminable.

Mr. Coughlin: I will allow it to end right now, your Honor. I will rest.

The Court: Do you have any rebuttal?

Mr. Stevens: Your Honor, we subpoenaed the records from the First National Bank to ascertain whether or not there were in fact three bank accounts there to clarify that matter, and I have not yet received them. If we might have 5 minutes I will call.

The Court: Recess for 10 minutes. [174]

(Whereupon, at 3:00 o'clock p.m., following a 10-minute recess, court reconvenes, and the following proceedings were had:)

Mr. Stevens: Call Mr. Hufford back, please.

ERNEST M. HUFFORD

a witness called in behalf of the petitioner on rebuttal, and having previously been duly sworn, testified as follows:

Mr. Stevens: Your Honor, Petitioner's Exhibit Y is a copy of the portion of the full record of the bank account of Cornelius P. Coughlan of the First National Bank. We would like to ask Mr. Coughlan to stipulate we can withdraw the copy and put in the full record since he raised the question.

The Court: Very well.

Mr. Coughlan: Respondent stipulates that it is the full account of Cornelius P. Coughlan at the First National Bank, Fairbanks, Alaska, and may be substituted for the partial account that was formerly Petitioner's Exhibit Y, and that former Petitioner's Exhibit Y may be removed from the evidence in this case.

Direct Examination

By Mr. Stevens:

Q. This is Petitioner's Identification 27, Mr. Hufford. Would you tell us what that is, please?

A. The ledger sheet of the starting of the account, of the [175] office account of C. P. Coughlan.

Q. And is that a record of your bank?

A. It is a record of our bank.

Q. And it is a record kept in the normal course of business, the office account of Cornelius P. Coughlan? A. That is right.

Mr. Coughlan: Your Honor, I am going to ob-

(Testimony of Ernest M. Hufford.)

ject to any testimony concerning this since the court would not allow the Respondent to bring in any evidence concerning any other account or any other checks or any other matters pertaining to the Silver estate file.

The Court: All the accounts of the Respondent are material matters. Objection overruled.

Q. (By Mr. Stevens): Did you examine the accounts of your bank to determine whether or not there were other accounts in Mr. Coughlan's name at that time?

A. We only found two. One of his personal and this office account.

Mr. Stevens: We offer identification 27, your Honor.

Mr. Coughlan: I will object to it, your Honor. There is nothing—none of the checks and so on were mentioned therein during the course of this hearing which were supposed to have gone through that particular bank account.

Mr. Stevens: This is rebuttal, your Honor. Mr. Coughlan [176] stated there were more than 2 accounts at that time and we have shown how many there were.

Mr. Coughlan: And the court would not allow the Respondent to give any testimony concerning the accounts.

The Court: There wasn't anything said while you were on the stand as to the number of accounts you had. The number of accounts you have to which credits could have been made as a result of this

(Testimony of Ernest M. Hufford.)

transaction is, of course, a very material thing, so the objection is overruled.

The Clerk: Petitioner's Exhibit CC.

(Account of C. P. Coughlan at First National Bank was marked Petitioner's Exhibit CC.)

Mr. Stevens: Your witness, Mr. Coughlan

Mr. Coughlan: No questions.

(Thereupon, the witness was excused and left the stand.)

Mr. Stevens: Petitioner rests, your Honor.

The Court: Now, there is just one question I wish to ask and that is whether these checks, which are made the subject of the 4 counts of the information, whether any of the exhibits shows that the amount of these checks or some part thereof was credited to the account of the Respondent. Do any of the exhibits show that or does the transcript show it?

Mr. Stevens: It is our contention, as to the First check. your Honor, that we have shown that the check came into [177] Mr. Coughlan's possession and was cashed and that the administrator never saw it.

The Court: I am just making this observation in the way of inquiry to see whether something might have been overlooked.

Mr. Stevens: No, your Honor, we believe the record shows that, as to the one check in the amount of \$1,000.00, it went to the Bank of Fairbanks; \$400.00 was credited to Mr. Coughlan's personal

account and \$600.00 to his loan account. Of the other 2 checks for \$1,000.00 both went through the First National Bank and was credited to his own personal account and Mr. Coughlan drew from those checks as his personal account shows, so we believe the money did go to his personal account.

The Court: Isn't there still another check?

Mr. Stevens: There is a lot of talk in the record about \$4,000.00, but we only have three \$1,000.00 checks and a \$950.00 check involved in this transaction.

The Court: But you have only accounted for 3 checks in your explanation.

Mr. Stevens: No, your Honor, we have accounted for 2 checks in the Bank of Fairbanks which is in the form of photostats from microfilm and one check, which is Government's Exhibit X, the 5 checks, in the amount of \$1,000.00 went through the Bank of Fairbanks.

The Court: I was inquiring with particular reference to the account itself, the ledger [178] account.

Mr. Stevens: The ledger account of Mr. Coughlan at the Bank of Fairbanks shows the entry of \$400.00, the balance from the first \$1,000.00 check after part of the money had been applied to his note account. The ledger account from the First National Bank of Fairbanks has the deposit of two \$1,000.00 checks and we believe that that demonstrates——

The Court: What about this \$950.00 check

Mr. Stevens: That is the Government's Exhibit F, your Honor, which was testified to.

Mr. Stevens: The only reflection in the ledger

The Court: The ledger account——
account is on the same day this was cashed, October 3, the Bank of Fairbanks shows an entry of \$500.00 to Mr. Coughlan's personal account. We cannot connect it directly through to that \$500.00.

The Court: Well, are the counsel ready now to argue the case?

Mr. Stevens: The Government is ready, Your Honor.

The Court: Unless there is surrebuttal—is there any surrebuttal?

Mr. Coughlan: There is none, your Honor.

The Court: You may proceed with the argument then.

(Whereupon, following the arguments of counsel for the Petitioner and counsel for the Respondent, the following proceedings were had:)

The Court: I will go over this transcript and announce [179] my decision tomorrow morning at 11:00 o'clock. You may adjourn court.

(Thereupon, at 4:05 o'clock p.m., this case was adjourned to the next morning, to be resumed at 11:00 o'clock a.m., March 23, [180] 1955.)

March 23, 1955—11:00 A.M.

The Court: In the matter of disbarment of Cornelius P. Coughlan, I conclude that the objections raised by way of answer are devoid of merit. The distinctions between the forms of action, in

equity and in law have been expressly abolished for a long time. There is but one form of complaint and the pleadings, including their amendments, in all civil cases are governed by the Federal Rules of Civil Procedure. However, so far as the trial itself is concerned the law provides that it shall be according to equity rules or as nearly in conformity therewith as possible. This provision governs because it is not in conflict with any rules of civil procedure. It becomes pertinent to inquire as to what these equity rules are. They are merely the maxim and principles of equity, many of which are embodied in the Rules of Civil Procedure. In fact, the rules are, in the main, an adoption of the equity rules.

Aside from this, however, the question as to whether one or the other applies to a specific issue or fact in this case is not presented, and hence will not be discussed. Of course, in the reception and evaluations of evidence and maxim conclusions, equitable principles must be applied, but even here the distinction between equity and the common law has been considerably narrow, for courts are enjoined by the Rules of Civil Procedure to admit, rather than exclude, evidence, the admissibility of which is doubtful. In other words, where it is [182] a close question whether proffered evidence is admissible under the rules of common law it should be admitted.

I find that the evidence in this proceeding, aside from the transcript which was offered as an exhibit, conclusively proves that the Respondent over a

period of 6 months embezzled \$3,950.00 from the Silver Estate. I further find that the testimony of the Respondent, with reference to his signatures on the several exhibits, is false and for that reason his demeanor in court and his testimony in other respects is entitled to no credence.

I should like to hear now from the United States Attorney as to the penalty. But, first, I would like to know whether restitution has been made?

Mr. Stevens: Restitution was made to the Silver Estate through the bonding company which carried the bond on Mr. Donhauser, but not through Mr. Coughlan. The bonding company has a judgment against Mr. Donhauser and Mr. Donhauser has an action pending against Mr. Coughlan which has not been completed as yet. No restitution has been made by Mr. Coughlan.

The Court: What recommendation have you to make as to the penalty to be imposed in this case?

Mr. Stevens: It is the Government's request that Mr. Coughlan be forthwith disbarred from practicing in the Territory of Alaska.

The Court: Has the Respondent anything to say, either [183] by way of extenuation or mitigation or in any other respect that is pertinent to this particular proceeding?

Mr. Coughlan: The Respondent has nothing to say at this particular time, your Honor.

The Court: Well, I conclude from the evidence that the Respondent is an unfit person to practice law and dishonest and that he should be disbarred for the protection of the courts and the public. The

findings of fact, conclusions of law and decree in conformity herewith may be presented to the court. There should be an order embodied that the Respondent shall not make any application for reinstatement until he first shows he has made full restitution, with interest, with the parties entitled thereto and that this has been done within 6 months within entry of the judgment. If there is nothing further to come before the court——

Mr. Coughlan: Your Honor, might I at this time bring up one pertinent fact here, that is, in respect to the findings of fact and conclusions of law. They will be filed with this court after the court has left—I mean, with this judge of the court after the court has left Fairbanks?

The Court: Well, if they can't be presented to me before I leave, why, they will be presented to me at Anchorage.

Mr. Coughlan: Yes, and the judgment will be signed at that time?

The Court: Yes. [184]

Mr. Coughlan: Now, your Honor, due to the fact that the judge in this particular case will be in Anchorage, rather than in Fairbanks, and it is a great distance from the City of Fairbanks, will this court allow the judge regularly sitting here to fix a supersedeas bond in this matter?

The Court: I think the matter of supersedeas bond should be presented to me. As a matter of fact, I am in doubt whether there is such a thing as superseding in an order of disbarment, but that is something that need not be decided at this time. In

the meantime, in view of the evidence in this case, I think that the court should make an order and the court does hereby order that the defendant be suspended from practice pending the entry of the decree in this case.

You may recess court subject to the call of the gavel.

(Whereupon, at 11:06 o'clock a.m., court was recessed subject to the call of the gavel.) [185]

United States of America,
Territory of Alaska—ss.

I, Iris L. Stafford, Official Court Reporter, hereby certify:

That the foregoing is a true, full and correct transcript of the proceedings on the trial of the above-Entitled cause, not including the closing arguments of counsel, taken by me in stenograph in open court at Fairbanks, Alaska, on March 22 and 23, 1955, and thereafter transcribed by me.

/s/ IRIS L. STAFFORD.

[Endorsed]: Filed July 13, 1955, D. C. Terr. of Alaska.

[Endorsed]: Filed July 15, 1955, U.S.C.A. [186]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, John B. Hall, Clerk of the above-entitled Court, do hereby certify that the list below comprises all of the proceedings and papers filed in this cause that are listed on the Designation of Record on Appeal of the Respondent and Appellant and the Designation of Record of the Petitioner and Appellee, viz:

- 1—Information.
- 2—Order re the Answer of the Respondent.
- 3—Amended information filed June 25, 1953.
- 4—Motion to Quash and Dismiss.
- 5—Minute Order Setting Trial.
- 6—Minute Order granting Motion to Quash.
- 7—Appellate Court Decision in No. 1651-Criminal.
- 8—Amended Information filed December 17, 1954.
- 9—Amended Order in re the Respondent answering.
- 10—Subpoena Duces Tecum served on U. S. Attorney.
- 11—Notice of Hearing on the taking of Deposition.
- 12—Motion of U. S. Attorney to Quash subpoena.
- 13—Notice of Hearing on above Motion.
- 14—Motion of U. S. Attorney to quash Notice of Deposition.
- 15—Minute Order re Deposition and Setting Trial.

16—Motion of Respondent re signatures of Donhauser.

17—Motion and Affidavit of Respondent in re additional Time to answer.

18—Motion of Respondent against the Information

19—Answer of the Respondent.

20—Stipulation in re Deposition of Clarence E. Bohn.

21—Receipt for a copy of the Deposition of Bohn.

22—Order Resetting Trial.

23—Trial by Court.

24—Findings of Fact and Conclusions of Law.

25—Order in re the Disbarment of the Respondent.

26—Notice of Appeal.

27—Motion for the Court to fix Supersedeas Bond.

28—Notice of Hearing on above Motion re Bond.

29—Order setting Hearing on the fixing of Bond.

30—Statement of Points.

31—Designation of Contents of Record on Appeal of the Respondent and Appellant, numbered 1 to 31, incl.

32—Motion for Extension of Time to Plead.

33—Order and Order setting Trial filed Dec. 30, 1954.

34—Motion of U. S. Attorney for Release of Documents.

35.—Signed Order for Release of Documents.

36—Notice of Hearing in re Motion to Dismiss.

37—Minute Order in re Motion to Dismiss and Answer.

38—Minute Order of Court Disqualifying itself herein.

39—Minute Order setting Trial.

40—Motion of Respondent for resetting of Trial.

41—Stipulation of Counsel in re Hearing.

42—Designation of Record of Petitioner and Appellee as indicated herein numbered 32 to 42, incl.

43—Affidavit of Service of foregoing Designation.

Manilla envelope with Identifications of Respondent and Appellant.

Manilla Envelope with Exhibits of Petitioner and Appellee.

Witness my hand and the seal of the above-entitled Court this 11th day of April, 1955.

[Seal] /s/ JOHN B. HALL,
Clerk of Court.

[Endorsed]: No. 14726. United States Court of Appeals for the Ninth Circuit. Cornelius P. Coughlan, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the District Court for the District of Alaska, Fourth Division.

Filed April 14, 1955.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

